

8473

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SANTA BARBARA

3 SANTA MARIA BRANCH; COOK STREET DIVISION

4 DEPARTMENT SM-2 HON. RODNEY S. MELVILLE, JUDGE

5

6

7 THE PEOPLE OF THE STATE OF )

8 CALIFORNIA, )

9 Plaintiff, )

10 -vs- ) No. 1133603

11 MICHAEL JOE JACKSON, )

12 Defendant. )

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17 REPORTER'S TRANSCRIPT OF PROCEEDINGS

18

19 TUESDAY, MAY 3, 2005

20

21 8:30 A.M.

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23 (PAGES 8473 THROUGH 8528)

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27 REPORTED MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

28 BY: Official Court Reporter 8473

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1 I N D E X

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3 Note: Mr. Sneddon is listed as "SN" on index.

4 Mr. Zonen is listed as "Z" on index. Mr. Auchincloss is listed as "A"  
on index.

5 Mr. Nicola is listed as "N" on index. Mr. Mesereau is listed as "M" on  
index.

6 Ms. Yu is listed as "Y" on index. Mr. Sanger is listed as "SA" on  
index.

7

8

9 PLAINTIFF'S

10 WITNESSES DIRECT CROSS REDIRECT RECROSS

11 SAUNDERS, David 8478-N 8487-SA

12 KLAPAKIS, Jeff

13 (Re-called) 8501-SN 8503-SA

14 BONNER, Craig (Re-called) 8509-SN 8518-SA

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1 E X H I B I T S

2 FOR IN PLAINTIFF'S NO. DESCRIPTION I.D. EVID.

3 872 Linked phone calls record 8478 8480

4 873 Linked phone calls record 8479 8480

5 874 Linked phone calls record 8479 8480

6 884 Four-page compilation of

7 telephone records 8510 8512

8 885 Diagrams 8512 8512

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1 Santa Maria, California

2 Tuesday, May 3, 2005

3 8:30 a.m.

4

5 THE COURT: Good morning, everyone.

6 THE JURY: (In unison) Good morning.

7 COUNSEL AT COUNSEL TABLE: (In unison)

8 Good morning, Your Honor.

9 THE COURT: You may proceed.

10 MR. NICOLA: Thank you, Your Honor.

11 The People call Dave Saunders as their next

12 witness.

13 THE COURT: Come forward, please. When you

14 get to the witness stand, remain standing.

15 Face the clerk over here and raise your

16 right hand.

17

18 DAVID SAUNDERS

19 Having been sworn, testified as follows:

20

21 THE WITNESS: Yes, ma'am.

22 THE CLERK: Please be seated. State and

23 spell your name for the record.

24 THE WITNESS: My name is David Saunders.

25 S-a-u-n-d-e-r-s.

26 THE CLERK: Thank you.

27 //

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1 DIRECT EXAMINATION

2 BY MR. NICOLA:

3 Q. Good morning. Would you please tell the  
4 jury how you're employed and what your position is?

5 A. Yes, I'm the chief criminal investigator for  
6 the District Attorney's Office.

7 Q. How long have you held that position?

8 A. About two and a half years.

9 Q. And prior to that, did you have other law  
10 enforcement experience?

11 A. Yes. I've been a peace officer about -- for  
12 about 19 years.

13 Q. Turning your attention to this case, were  
14 you asked to assist Sergeant Bonner and Detective  
15 Zelis in the analysis of certain phone records  
16 contained in telephone binders to my left and in  
17 front of you?

18 A. Yes.

19 Q. Were you assigned the dates of March 2nd,  
20 3rd and 4th of 2003?

21 A. Yes.

22 Q. If you could turn your attention to Exhibit  
23 872, please.

24 A. Okay.

25 Q. Do you recognize that exhibit?

26 A. Yes.

27 Q. And could you tell the jury what that

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28 exhibit is? 8478

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1 A. Yeah, this is a diagram showing the relevant  
2 telephone calls involved in this matter on March  
3 2nd, 2003.

4 Q. And if you can flip to Exhibit 873.

5 A. Yes.

6 Q. Is that the diagram for March 3rd of 2003?

7 A. Yes.

8 Q. And Exhibit 874, please.

9 A. Yes. That's the diagram for the 4th.

10 Q. Now, behind each of the diagrams marked 872,  
11 873 and 874, are there spreadsheets which contain  
12 the actual phone calls?

13 A. Yes, there are.

14 Q. Okay. And are those accurate?

15 A. Yes.

16 Q. Did you physically connect the phone calls  
17 that are listed on that chart to the evidence in the  
18 telephone binders that we've previously discussed?

19 A. Yes, for -- on the spreadsheet for each row,  
20 each one, I manually checked and compared it to the  
21 exhibit to confirm the accuracy.

22 Q. Okay. And do Exhibits 872, 873 and 874  
23 accurately reflect the analysis that you conducted?

24 A. Yes.

25 MR. NICOLA: Your Honor, at this time we'd  
26 offer those three exhibits into evidence.

27 MR. SANGER: No further objection. We have

28 the objection to tying these up, but other than 8479

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1 that --

2 THE COURT: All right. They're admitted.

3 Q. BY MR. NICOLA: If you could turn to the

4 chart for Exhibit 872, please.

5 And, Your Honor, if I may have "Input 4" on

6 the Elmo.

7 Is that the diagram chart for Sunday,

8 March 2nd of 2003?

9 A. Yes.

10 Q. If you could please start in the upper

11 left-hand corner and tell us when the call between

12 the Frank Cascio phone and the Evvy Tavasci home

13 phone occurred.

14 MR. SANGER: Your Honor, I'm going to object

15 and also move under 352; the objection being the

16 documents speak for themselves. There's been

17 inadequate foundation, and 352, undue consumption of

18 time going through each call.

19 THE COURT: All right. That's overruled.

20 Go ahead.

21 THE WITNESS: The call between Mr. Cascio and

22 Ms. Tavasci occurred at 6:04 p.m., and lasted two

23 minutes or less.

24 Q. BY MR. NICOLA: Okay. And generally can you

25 give us a time frame between the Cascio phone and

26 the icon marked "Evelyn Tavasci/MJJ Productions"?

27 A. Yes, the calls occurred between 6:03 p.m.

28 and 6:15 p.m. 8480

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1 Q. Okay. And if you could direct your  
2 attention to the bottom middle icon, the one that's  
3 marked "Paul Hugo." And I've placed in front of you  
4 Exhibit 453. If you could open that up, please.

5 Are the telephone records for that Paul Hugo  
6 phone contained within Exhibit 453 at Tab No. 3?

7 A. Yes, sir.

8 Q. Do the records indicate where the calls from  
9 the Paul Hugo phone originated on March 2nd of 2003?

10 A. Yes, Brazil.

11 Q. And can you tell us which page you're  
12 looking at in that exhibit?

13 A. Yes, sir, it's page 8 of 12. As well as  
14 page 9 of 12.

15 Q. I'm going to put page 9 of 12 up on the  
16 screen briefly. I've highlighted a line in there.

17 Based on your review of the records, what  
18 can you tell us about the call that is highlighted  
19 up on the Elmo?

20 A. Mr. Hugo checked his voice mail at 10:32  
21 a.m., Brazil time, and he was in Brazil when he did  
22 so.

23 Q. And Brazil is five hours ahead of the  
24 Pacific Coast?

25 A. Yes.

26 Q. So that's 5:32 a.m., California time,  
27 correct?

28 A. That's right. 8481

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1 Q. Is that the first call that you see in the  
2 Paul Hugo records?

3 A. Yes, sir.

4 Q. Coming from Brazil?

5 A. Yes.

6 Q. Now, with respect to the calls - I'll put it  
7 back up - between the Paul Hugo phone and the  
8 Vincent Amen phone, what time was the first call  
9 placed from Brazil to the Vincent Amen phone?

10 A. 6:05 p.m., Brazil time.

11 Q. Okay. How long did that call last?

12 A. Three minutes or less.

13 Q. Immediately after that call to the Vincent  
14 Amen phone from the Paul Hugo phone, was there a  
15 call from the Frank Cascio phone to the Vince Amen  
16 phone?

17 A. Yes.

18 Q. How long was that call?

19 A. One minute or less.

20 Q. And immediately after the call between the  
21 Frank Cascio phone to the Vince Amen phone, was  
22 there also a call that's not on this chart from the  
23 Frank Cascio phone to the Paul Hugo phone?

24 A. Yes.

25 Q. Okay. I'm going to put that on the chart.

26 I believe this is page eight of the Paul Hugo phone  
27 records; is that correct?

28 A. Yes, sir. 8482

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1 Q. And were you able to confirm which of these  
2 calls was the call between the Frank Cascio phone to  
3 the Paul Hugo phone?

4 A. Yes, it's the one item, number three.

5 Q. And that call lasted for eight minutes?

6 A. That's right.

7 Q. The additional calls on this record,  
8 specifically Call 4 and Call 9, do you recognize the  
9 phone numbers associated with those calls being  
10 dialed out from Brazil?

11 A. Yes. That's Vincent Amen's.

12 Q. Okay. And with respect to Call No. 7 and 8,  
13 do you recognize those phone numbers? Are they on  
14 your chart for Marc Schaffel?

15 A. Yes. Thank you. Yes.

16 Q. Now, before we finish with the Paul Hugo  
17 phone record, I'd like to show you page 11 of 12.  
18 Just briefly, is that page 11 of 12?

19 A. Yes, sir.

20 Q. Okay. I'm not going to project it, but  
21 while you're testifying, can you tell us whether  
22 that call item contained within the Paul Hugo phone  
23 records was the last call that you see from Brazil?

24 A. It was.

25 Q. And without telling us the actual phone  
26 number, do you know from your review of the records  
27 where that call was placed to?

28 A. The defendant's home. 8483

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1 Q. Neverland Valley Ranch?

2 A. Yes, sir.

3 Q. And that call lasted for how long?

4 A. Two minutes or less.

5 Q. Okay. If we could turn to Exhibit 873,

6 please.

7 And if I may use the Elmo again, Your Honor.

8 Is that the chart for Monday, March 3rd of

9 2003?

10 A. Yes.

11 Q. And at the right-hand corner of the chart,

12 if you would focus on the calls labeled "Vincent

13 Amen" and "Neverland Valley Ranch," if you could

14 give us the time range that those calls occurred

15 between those two phones.

16 A. The first call was at 3:17 p.m. and the last

17 call was at 6:49 p.m.

18 Q. And the same question with respect to the

19 calls between the Frank Cascio phone and the

20 Neverland Valley Ranch phone.

21 A. The first call was at 1:34 p.m., the last

22 call was at 8:28 p.m.

23 Q. The calls between Neverland Valley Ranch and

24 the marker marked "Evelyn Tavasci/MJJ Production,"

25 was that call -- excuse me, was the phone number for

26 the Evelyn Tavasci line that you have up there

27 402-7087, Area Code (818)?

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28 A. Yes. 8484

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1 Q. Were all the calls in that link to that  
2 particular phone?

3 A. Yes.

4 Q. If we could turn, please, to the next  
5 exhibit, 874. If we could start with the Paul Hugo  
6 telephone line, I'd ask you whether the calls  
7 between the Paul Hugo line and the Vince Amen line  
8 were in one direction or whether the calls were  
9 going both ways.

10 A. They were in one direction.

11 Q. And which direction was that?

12 A. Mr. Hugo was calling Mr. Amen.

13 Q. And are the calls being placed from the Paul  
14 Hugo phone in Brazil?

15 A. Yes, sir.

16 Q. The next link would be from Paul Hugo phone  
17 to Marc Schaffel phone. Were those also all  
18 initiated by the Paul Hugo phone?

19 A. Yes.

20 Q. Can you tell us what time the first call  
21 between the Hugo phone and the Amen phone first came  
22 in?

23 A. Yes.

24 Q. Please do so.

25 A. 1 a.m., Brazil time.

26 Q. Okay. And with respect to the calls between  
27 Paul Hugo phone and Marc Schaffel phone, can you

28 tell us what time that first call came in? 8485

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1 A. 1:12 p.m., Brazil time.

2 Q. Did the calls between the Vince Amen phone  
3 and the Neverland Valley Ranch phone go both  
4 directions or one direction?

5 A. One direction.

6 Q. Was there a call placed from the Vince Amen  
7 phone to Neverland Valley Ranch at 1307 p.m.?

8 A. Yes.

9 Q. And did that follow a call -- excuse me.

10 Was that the first call to Neverland Valley Ranch by  
11 Vince Amen's phone?

12 A. Yes.

13 Q. And the other two calls were at 4:14 and  
14 2:34 p.m.?

15 A. Yes, sir.

16 Q. If you could turn your attention to the  
17 Frank Cascio phone.

18 A. Okay.

19 Q. Were all the phone calls from the Frank  
20 Cascio phone inbound to Neverland Valley Ranch?

21 A. Yes.

22 Q. And what time was the first call?

23 A. 9:05 a.m.

24 Q. And how long did that call last?

25 A. Seven minutes or less.

26 MR. NICOLA: Thank you, Chief Investigator.

27 I have no more questions.

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28 MR. SANGER: May I proceed? 8486

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1 THE COURT: Yes.

2

3 CROSS-EXAMINATION

4 BY MR. SANGER:

5 Q. Investigator Saunders, how are you?

6 A. Fine, thank you.

7 MR. SANGER: Why don't you leave those

8 there, please. Those are the originals?

9 MR. NICOLA: These are my copies.

10 MR. SANGER: Oh, the originals are up there.

11 Sorry.

12 Excuse me, Your Honor, I'm sorry.

13 Q. All right. I'm going to ask you to clarify

14 one thing, first of all. And we're going to put

15 these exhibits up quickly. You said, your testimony

16 was, that a call was placed by Paul Hugo to the

17 defendant's home. Do you remember saying that?

18 A. Yes.

19 Q. Okay. You were out there at the search on

20 November 18th, 2003, were you not, sir?

21 A. That's correct.

22 Q. And you're aware that what you refer to as

23 the defendant's home is, in fact, 2700 acres; is

24 that correct?

25 A. Yes.

26 Q. And you're aware that not only is there a

27 large home, but there are a number of outbuildings;

28 is that correct? 8487

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1 A. That's right.

2 Q. And there is approximately 100 people who  
3 are employed at that ranch; is that correct?

4 A. I don't know if there are 100 people  
5 employed.

6 Q. How many -- what's your best estimate,  
7 having been out there?

8 A. You know, I -- that's beyond the scope of my  
9 knowledge. I really don't know how many employees  
10 he has.

11 Q. Let's just put it this way: You know that  
12 there are dozens and dozens of people who work out  
13 there; how about that?

14 A. That's a fair assessment.

15 Q. All right. And do you know how many  
16 telephone extensions there are out there?

17 A. I know there are multiple telephone  
18 extensions. I don't know the exact number off the  
19 top of my head.

20 Q. Now, when you did the phone analysis, you  
21 evaluated how many telephone numbers, in other  
22 words, distinct telephone numbers for Neverland  
23 Valley Ranch?

24 A. For the three dates in question I'd have to  
25 go back and look at each date to add them up, but  
26 there were multiple numbers.

27 Q. Okay. Are there at least eight distinct

28 telephone numbers? 8488

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1 A. No, I don't think there are that many.

2 Q. During the period you looked at, you looked

3 at about four of them; is that right?

4 A. That sounds more accurate, yes.

5 Q. Were you aware that there were more than the

6 four numbers that you looked at?

7 A. Yes.

8 Q. And then in addition to telephone numbers,

9 I'd asked you about extensions. In other words,

10 physical telephones located different places. And

11 you don't know how many physical telephones are

12 located in different places on the ranch, do you?

13 A. I'm sorry, can you rephrase that question?

14 Q. Well, when I said "extensions," I wanted to

15 clarify we're talking about -- there's phone numbers

16 and then there are actual telephones. You can have

17 more telephones than extensions, I take it?

18 A. Sure. Sure.

19 Q. And so do you know how many actual telephone

20 extensions there were throughout that ranch?

21 A. No.

22 Q. Would you say dozens?

23 A. I -- I'm not qualified to comment on how

24 many there are.

25 Q. Well, you were -- you were out there during

26 the search, and you looked around, right?

27 A. No. I didn't look around. I was at the

28 command post. 8489

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1 Q. Were you in the house?

2 A. No, I was at the command post.

3 Q. I'm sorry?

4 A. I was at the command post.

5 Q. You were out on the front porch of the house  
6 for a while?

7 A. Right.

8 Q. You're in the photographs of the search,  
9 right?

10 A. I haven't seen my photographs.

11 Q. Okay. And then where did you go to? Where  
12 is the command post?

13 A. It was parked in front of the residence.

14 Q. Okay. So you were outside -- the command  
15 post was the big van, or the big motorhome?

16 A. Motorhome-looking thing.

17 Q. You didn't stay inside the whole time on  
18 November 18th, 2003, did you?

19 A. Inside the mobile home?

20 Q. Right.

21 A. No, sir.

22 Q. All right. And it's your testimony you did  
23 not go into any of the buildings, any of the  
24 structures anywhere?

25 MR. NICOLA: Objection, Your Honor, this is  
26 beyond the scope.

27 THE COURT: Overruled.

28 THE WITNESS: At one point, I went in to get 8490

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1 some of my personnel to check on them, and that was  
2 a fairly isolated incident.

3 Q. BY MR. SANGER: All right. In any event,  
4 your understanding is that there was certainly  
5 several telephone extensions on that ranch, let us  
6 say that.

7 A. Yes.

8 Q. And do you know who was at the ranch, which  
9 employees were at the ranch, on March the 2nd, 2003?

10 A. Personal knowledge or what the investigation  
11 has indicated?

12 Q. Well, start with personal knowledge.

13 A. No.

14 Q. You know there were employees there,  
15 correct?

16 A. Yes.

17 Q. All right. And you were there at the search  
18 as a representative of the District Attorney's  
19 Office, correct?

20 A. Yes, sir.

21 Q. Mr. Sneddon himself was there during part of  
22 the search, correct?

23 MR. NICOLA: Objection, relevance, Your  
24 Honor.

25 THE COURT: Sustained.

26 Q. BY MR. SANGER: All right. In any event,  
27 you saw other district attorney's employees besides

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28 yourself there at the search, correct? 8491

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1 MR. NICOLA: Objection, relevance, Your

2 Honor.

3 THE COURT: Sustained.

4 Q. BY MR. SANGER: So when you said Paul

5 Hugo -- the phone call went to the defendant's

6 home --

7 A. Uh-huh.

8 Q. -- you have no idea who made the call, first

9 of all, Paul Hugo's phone, right? You have no idea

10 who placed the call from his phone, correct?

11 A. I'd say it's a reasonable inference that he

12 did. I wasn't there and didn't witness it.

13 MR. SANGER: Move to strike based on

14 speculation.

15 THE COURT: It's a question you asked,

16 Counsel. I'm not going to restrict him.

17 MR. SANGER: It's not responsive if it's --

18 THE COURT: That's responsive. You have no

19 idea. Well, he has an idea.

20 MR. SANGER: All right. Very well, Your

21 Honor.

22 Q. Beyond the fact that if somebody's phone is

23 in their name, you could speculate that they may

24 have been the person using it. Beyond that, from

25 these records, can you determine who placed the call

26 from Paul Hugo's phone?

27 A. No.

28 Q. Now, more importantly, with regard to the 8492

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1 Neverland Valley Ranch, can you determine from the  
2 phone records who answered the phone, if anybody, at  
3 Neverland Valley Ranch when the call was made?

4 A. From the phone records?

5 Q. Right.

6 A. No.

7 Q. All right. And can you tell us from the  
8 phone records -- let me withdraw that.

9 I asked you about the employees at the ranch

10 on March the 2nd, 2003. And I think, if I'm not  
11 mistaken, you said that there were employees -- your  
12 understanding was that there were employees there,  
13 you just don't know who; is that right?

14 A. Yes, sir.

15 Q. All right. Now, were there other people  
16 there, guests, or people associated with business or  
17 music, or some other connection, were there other  
18 people at the ranch besides employees on March the  
19 2nd, 2003; do you know?

20 A. There were many people there. I don't know  
21 what their role was specifically. There were  
22 employees. There were some young boys, and there  
23 were some other people but --

24 Q. On March the 2nd, 2003?

25 A. We're talking about the day of the search  
26 warrant?

27 Q. No. We're talking about March the 2nd,

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1 A. Oh, I'm sorry.

2 Q. You testified to March the 2nd.

3 A. Yes, sir. I see. You're right. I'm sorry.

4 I don't know who was there.

5 Q. All right. Now, when did you prepare 872,

6 the chart that was put up on the board?

7 In fact, Your Honor, while asking that

8 question, I'd like to approach and retrieve that

9 exhibit, if I may put it up.

10 THE COURT: You may.

11 MR. SANGER: Thank you.

12 THE WITNESS: That was finalized yesterday

13 morning.

14 Q. BY MR. SANGER: All right. You can leave it

15 in the book for a moment.

16 Mr. Nicola has given me his copy of this,

17 which purports to be the same thing. May I put that

18 up?

19 THE COURT: You may.

20 MR. SANGER: It's 872.

21 Q. All right. Now, you had just indicated this

22 was finalized yesterday morning, this particular

23 summary chart.

24 A. Yes, sir.

25 Q. Which is 872, for the record.

26 And on that chart, you do not record some of

27 these telephone calls that you referred to, is that

28 correct, in your testimony? 8494

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1 A. Yes, there was a call between -- an outgoing  
2 call from Mr. Cascio --

3 Q. Okay. I didn't ask you about -- to detail  
4 them. Because there were several, were there not?  
5 You referred to a call from Cascio, a call from Hugo  
6 to Neverland Valley Ranch, at least two of them; is  
7 that correct?

8 MR. NICOLA: I'd object. It misstates the  
9 evidence with respect to Neverland Valley Ranch.

10 THE COURT: The objection is overruled.

11 You may answer.

12 THE WITNESS: That's not what I recall.

13 That call between Hugo and Neverland Valley was when  
14 Hugo was leaving Brazil, and I believe that was a  
15 later date than the second.

16 Q. BY MR. SANGER: What date was that?

17 A. Let me look back into the records and --

18 Q. Well, that's all right. It's in the  
19 records.

20 MR. NICOLA: Your Honor, I'd request the  
21 witness be allowed to answer that question.

22 MR. SANGER: He asked permission to go  
23 through the records and --

24 THE WITNESS: I have it now.

25 MR. SANGER: If he has it, then we'll ask.

26 THE COURT: All right.

27 Q. BY MR. SANGER: What date was it?

28 A. March 8th. 8495

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1 Q. March 8th, okay. So that would not have  
2 anything to do with the March 2nd call, the March  
3 2nd chart for 872, correct?

4 A. Correct.

5 Q. All right. Now, there's one page attached  
6 to 872, the first page of which we have on the  
7 board, right? You have one page --

8 A. There's one page, yes, sir.

9 Q. And it's not a full page, correct? All  
10 right. It looks like you have more on your page  
11 than I do on mine.

12 May I approach, Your Honor?

13 THE COURT: Yes.

14 Q. BY MR. SANGER: On page two of 872 that you  
15 have that's been admitted into evidence, you have a  
16 number of calls from Mr. Hugo which are added on to  
17 the analysis; is that correct?

18 A. They're included in the analysis, yes, sir.

19 Q. When were they added on?

20 A. I don't have an independent recollection  
21 when they were added on. I know I was working on  
22 this through the weekend confirming that everything  
23 was completely accurate. And I believe they were  
24 there at that time.

25 Q. All right. Now, as far as Mr. Hugo is  
26 concerned, in the course of your investigation in  
27 this case, you were aware that Mr. Hugo and -- Mr.

28 Hugo was a production associate of Marc Schaffel, 8496

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1 correct?

2 MR. NICOLA: Objection. Lack of foundation;

3 calls for hearsay.

4 THE COURT: Overruled.

5 You may answer.

6 THE WITNESS: Would you please repeat the

7 question?

8 MR. SANGER: Ask, Your Honor, if it may be

9 read back.

10 THE COURT: Yes.

11 (Record read.)

12 THE WITNESS: No.

13 Q. BY MR. SANGER: Were you aware that Mr. Hugo

14 had worked with Marc Schaffel in any capacity?

15 MR. NICOLA: Objection, lack of foundation,

16 Your Honor.

17 THE COURT: Overruled.

18 You may answer.

19 THE WITNESS: Yes, generally.

20 Q. BY MR. SANGER: All right. And you were

21 aware that at this time Marc Schaffel had traveled

22 commercially to Brazil; is that correct?

23 A. No.

24 MR. SANGER: Okay. All right. With the

25 Court's permission, I'll put up --

26 MR. AUCHINCLOSS: My apologies.

27 (Laughter.)

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1 MR. SANGER: Are we to go to our corners

2 now?

3 THE COURT: You said the magic word.

4 (Laughter.)

5 MR. SANGER: Sorry, I stole the Court's

6 line.

7 THE COURT: You did.

8 MR. SANGER: Yours was probably funnier,

9 I'll acknowledge that.

10 I would like to put 873 up, if I may. Is

11 that all right, Your Honor?

12 THE COURT: Yes. Of course.

13 Q. BY MR. SANGER: And I'm using the copy just

14 provided to me by the District Attorney, so if you'd

15 be kind enough to take a look at your 873 and make

16 sure that we are literally and figuratively on the

17 same page here.

18 A. Yes, sir.

19 Q. Okay. I don't want to spend unnecessary

20 time on this, but you notice in your analysis of the

21 phone records here that there are several telephone

22 numbers that were associated with Evelyn Tavasci?

23 A. Yes.

24 Q. In other words, there is the one you've

25 labeled "MJJ Production," there's one "Evelyn/MJJ

26 Prod, Unit 1," there's one "Evelyn Tavasci home,"

27 and there's one "Evelyn Tavasci/MJJ Production" at

28 the bottom. Do you see that on the chart? 8498

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1 Do we have our --

2 A. Yes.

3 MR. SANGER: Do we have our pointer, please?

4 MS. YU: Oh.

5 MR. SANGER: Thank you.

6 Q. There's a technical term for this. "The

7 pointer thing."

8 There we go. Just so we're clear - I think

9 everybody is, but just in case - we have this one

10 that says, "MJJ Production"?

11 A. Right.

12 Q. And this one says, "MJJ Production" also.

13 But those are, in fact, two different phone numbers;

14 is that correct?

15 A. Yes.

16 Q. The first -- the first one at the top is --

17 ends in 9239, correct?

18 A. Let me double-check that.

19 That's correct.

20 Q. And this one ends in 8984, correct?

21 A. Yes.

22 Q. And then there's another one over here that

23 says, "Tavasci," comma, "Evelyn/MJJ Production," and

24 that's yet another phone which, in fact, is a

25 different Area Code and ends in 7087, correct?

26 A. Yes.

27 Q. All of these phones that we referred to that

28 say "Tavasci" and have some designation after them, 8499

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1 sometimes the same, all of these five phones are  
2 different phone numbers, right?

3 A. That's right.

4 Q. And they're either (310) or (818), which is  
5 the Los Angeles area; is that correct?

6 A. Yes.

7 Q. And then you have this other phone down  
8 here, "MJJ Production/Miko Brando," which is yet a  
9 different number; is that right?

10 A. That's right.

11 Q. Now, in essence, you have somebody at -- in  
12 various places here -- without going into excessive  
13 detail, you've got somebody on one Evelyn Tavasci  
14 phone calling somebody else on another Evelyn  
15 Tavasci phone, correct?

16 A. Right.

17 Q. Now, you speculated before, so I'll let you  
18 do it again, if it's all right. Do you therefore  
19 assume it's not Evelyn Tavasci calling herself on  
20 the various phones?

21 A. That's a good point. Thanks for giving me a  
22 little latitude here. I think that example down at  
23 the bottom, the seven calls going to Neverland, for  
24 example, I know that's Chris Carter calling the  
25 ranch, and based on --

26 Q. I didn't ask you if it was Chris Carter  
27 calling the ranch. I asked you about these. I

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28 didn't say say anything you want. I was asking 8500

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1 about these calls. You assume that it is not Evelyn  
2 Tavasci calling Evelyn Tavasci; that in fact there  
3 are other people calling --

4 A. Right.

5 Q. -- on those phones?

6 A. Right.

7 MR. SANGER: All right. Okay. All right.

8 And I have no further questions.

9 MR. NICOLA: No questions.

10 THE COURT: All right. Thank you. You may  
11 step down.

12 Call your next witness.

13 MR. SNEDDON: Lieutenant Klapakis, Your

14 Honor.

15 THE COURT: You may be seated. You're still  
16 under oath.

17

18 JEFF KLAPAKIS

19 Having been previously sworn, resumed the  
20 stand and testified further as follows:

21

22

23 DIRECT EXAMINATION

24 BY MR. SNEDDON:

25 Q. Good morning.

26 A. Good morning.

27 Q. Are you familiar with the telephone number

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28 Area Code (310) 490-0144? 8501

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1 A. Yes, I am.

2 Q. And did you make a telephone call to that  
3 particular phone number?

4 A. Yes, I did.

5 Q. When did you do that?

6 A. Yesterday morning.

7 Q. And when you made that telephone call -- let  
8 me go back for just a second. During the course of  
9 this investigation, have you had an occasion to  
10 contact a private investigator by the name of Brad  
11 Miller?

12 A. Yes, I have.

13 Q. Do you remember when the first time you  
14 contacted Mr. Miller was?

15 A. It was 2004.

16 Q. And you had a conversation with him at that  
17 time?

18 A. Yes, I believe we did.

19 Q. Was it a personal call or was it a telephone  
20 call?

21 A. It was a personal call. We were trying to  
22 locate him to deliver some paperwork and stuff like  
23 that, so --

24 Q. And were you able to make contact with him?

25 A. Yes.

26 Q. Now, with regard to the telephone number  
27 that you called, it's Area Code (310) 490-0144, you

28 called that number yesterday? 8502

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1 A. Yes, I did.

2 Q. And did you talk to somebody on the other  
3 line?

4 A. Yes, I did.

5 Q. Who was that?

6 A. Brad Miller.

7 Q. Did you have a conversation with Mr. Miller,  
8 without going into the details of what was said?

9 A. Yes, I did.

10 Q. Were you satisfied that the person on the  
11 other end of that line was Mr. Miller?

12 A. Yes, I am.

13 Q. Based on both the first conversation earlier  
14 in 2004 and the content of the conversation  
15 yesterday?

16 A. Yes.

17 MR. SNEDDON: Nothing further, Your Honor.

18 THE COURT: Any questions?

19 MR. SANGER: I'm sorry?

20 MR. SNEDDON: Nothing further.

21 MR. SANGER: Okay.

22

23 CROSS-EXAMINATION

24 BY MR. SANGER:

25 Q. Lieutenant Klapakis, how are you doing?

26 A. Fine, sir.

27 Q. You've been on this case since June or July

28 of 2003, correct? 8503

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1 A. Actually, I believe it was prior to that.

2 February of 2003.

3 Q. You've been on this case since February of

4 2003?

5 A. Yes.

6 Q. And you were aware of Brad Miller's

7 existence in this case since what time?

8 A. Prior to November 2003.

9 Q. And you say that because, among other

10 things, you all got a search warrant for Brad

11 Miller's office before November 18, 2003, correct?

12 A. We obtained a search warrant before November

13 18th, yes, we did.

14 Q. And you were aware that Brad Miller was a

15 private investigator before November 18, 2003,

16 correct?

17 A. Yes.

18 Q. In part, Mr. Sneddon himself went to Brad

19 Miller's office before November 18, 2003, to

20 investigate and take photographs, correct?

21 A. Mr. Sneddon's been by there, yes, that's

22 correct.

23 Q. Did he go down to investigate and take

24 photographs?

25 A. He went down to take photographs of the

26 office, yes.

27 Q. And he looked in the phone book to see if he

28 had the correct address for Mr. Miller, correct? 8504

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1 A. You know, I'm not sure if he looked in the  
2 phone book, sir.

3 Q. He wrote a report, right?

4 A. Do you have the report? It would refresh my  
5 memory.

6 Q. Somewhere.

7 A. All right.

8 Q. It's a fair question, but I don't have it  
9 right in front of me. In any event -- and Mr.

10 Sneddon actually went down and showed photographs of  
11 Brad Miller to Janet Arvizo before the November 18,  
12 2003, search, correct?

13 A. I believe that's correct.

14 Q. And then you had officers search Mr.

15 Miller's office in Beverly Hills on November 18,  
16 2003, correct?

17 A. That's correct.

18 Q. And they went through, to a certain extent,  
19 his papers, records, and files within the scope of  
20 the search warrant, correct?

21 MR. SNEDDON: Your Honor, I'm going to  
22 object as immaterial and irrelevant. Beyond the  
23 scope.

24 THE COURT: Sustained.

25 MR. SANGER: All right.

26 Q. It's your testimony that the first time you  
27 figured out Brad Miller's phone number was

28 yesterday? 8505

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1 MR. SNEDDON: Object as argumentative.

2 THE COURT: Overruled.

3 You may answer.

4 THE WITNESS: No. We believed it was -- from  
5 other sources, we believed it to be Brad Miller's  
6 phone.

7 Q. BY MR. SANGER: When did you first believe  
8 it was Brad Miller's phone?

9 A. I believe that we were aware it was Mr. --  
10 a phone that was linked to Mr. Miller through other  
11 documents we had found through the various search  
12 warrants that we had found from Mr. Schaffel's  
13 residence, I believe.

14 Q. And so if today is May the 3rd -- which I  
15 think it is. I was just verifying that. Is that  
16 correct?

17 A. Yes.

18 Q. All right. Time flies.  
19 May the 2nd, 2005, is the first time that  
20 you actually attempted to verify that this phone  
21 number belonged to Brad Miller; is that correct?

22 A. That's incorrect.

23 Q. When did you try to verify it before?

24 A. Well, one of my detectives has written  
25 several search warrants to various phone companies  
26 involved in this investigation. What we -- as you  
27 heard, there's thousands of numbers. We've -- we

28 were able to determine a couple of days ago that the 8506

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1 phone number that we believed showed linked to Brad  
2 Miller was actually linked to a subsidiary cellular  
3 phone company that fell through -- fell through the  
4 cracks when we were putting everything together.

5 Q. All right. But in order to determine whose  
6 phone it is, you concluded that you can call it and  
7 find out who answers it, right?

8 A. That's exactly what I did.

9 Q. And you concluded that yesterday and did  
10 that yesterday, correct?

11 A. That's what I did yesterday, yes, sir.

12 Q. All right. Now, there's no question, based  
13 on your investigation at this point, that Brad  
14 Miller was a licensed private investigator, correct?

15 A. I'm sorry, say that again.

16 Q. Based on your investigation -- you're in  
17 charge -- back to the foundation. You're in charge  
18 of the investigation; is that correct?

19 A. Yes, I am.

20 Q. And as a part of that, your responsibility  
21 is to have a working knowledge of the investigation  
22 that's conducted by officers under you; is that  
23 correct?

24 A. I have some knowledge of the investigation,  
25 yes.

26 Q. And you are aware that Brad Miller is a  
27 licensed private investigator, correct?

28 A. I'm aware of that. 8507

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1 Q. And you were aware long before today that  
2 Brad Miller was, in fact, working for Mark Geragos,  
3 correct?

4 A. I'm aware of that.

5 Q. Okay. And you've been aware of that for  
6 some time?

7 A. Yes, I have.

8 Q. And you would have expected that Mark  
9 Geragos and Brad Miller would have been in  
10 communication based on the fact that he's a lawyer  
11 and this was a private investigator working for him,  
12 correct?

13 A. Yes.

14 Q. Okay. So you called yesterday?

15 A. Yes.

16 MR. SANGER: Okay. No further questions.

17 MR. SNEDDON: Nothing further.

18 THE COURT: You may step down.

19 Call your next witness.

20 MR. SNEDDON: Craig Bonner.

21 MR. SANGER: Do you have an exhibit number  
22 for this?

23 MR. SNEDDON: I'm trying to find out when I  
24 have the evidence.

25 MR. SANGER: Yes.

26 (Off-the-record discussion held at counsel  
27 table.)

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1 CRAIG BONNER

2 Having been previously sworn, resumed the

3 stand and testified further as follows:

4

5 DIRECT EXAMINATION

6 BY MR. SNEDDON:

7 Q. Detective Bonner, one of the assignments

8 that you were given in this case and which you spent

9 considerable time on the witness stand the last

10 couple of days just testifying to phone records,

11 correct?

12 A. That's correct.

13 Q. And in the -- in the procurement of those

14 records, did you obtain a search warrant for the

15 telephone records of Brad Miller?

16 A. For the number that I associated with Brad

17 Miller, yes.

18 Q. Okay. And how many telephone companies was

19 that request sent to?

20 A. Every single one, by name and his personal

21 information.

22 Q. Every single one doing business in

23 California?

24 A. Correction -- or, I'm sorry, correct.

25 Basically any phone company, ATT Wireless, all of

26 the cell phone companies, as well as Verizon

27 California and Pac-Bell. Anything that I thought

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28 might have a telephone registered to Mr. Miller. 8509

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1 Q. And as a result of the search warrants that  
2 were returned, did you -- did you get any  
3 information from any of those carriers that the  
4 private investigator Brad Miller had a telephone?

5 A. None of the information directly came back  
6 directly to Mr. Miller.

7 Q. Now, with regard to the telephone number  
8 Area Code (310) 490-0144, do you recognize that  
9 number?

10 A. Yes.

11 Q. And when -- and was there a return on the  
12 search warrant associated with that number?

13 A. There was. It came back to a Payless  
14 reseller with an associated name -- last name of  
15 like Mozaffarian.

16 Q. So Mr. Miller wasn't in any way, with the  
17 paperwork you've got, connected to that number?

18 A. No.

19 Q. As a result of the information that  
20 Detective Klapakis was able to obtain about the  
21 person that he talked to at that number, were you  
22 asked to put together a list of phone calls that you  
23 reviewed from the Exhibits 452, 456 and 450 that you  
24 had previously testified?

25 A. Yes, I did that last night.

26 Q. And let me just show you the exhibit which  
27 I've shown to counsel, Your Honor, and had marked as

28 884 for identification purposes. 8510

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1 THE COURT: All right.

2 MR. SNEDDON: It's a four-page document.

3 THE WITNESS: This is the materials I

4 prepared last night.

5 Q. BY MR. SNEDDON: That's a compilation of the  
6 telephone records that are in evidence in this case  
7 that reflect communications between that phone  
8 number, Mr. Miller's phone, and other parties in  
9 this case, correct?

10 A. That's correct.

11 Q. And is that particular exhibit, 884, listed  
12 in the time in which those are -- the sequence in  
13 which those phone calls are made?

14 A. Yes, it does.

15 Q. And the individual names that are contained  
16 on that particular exhibit?

17 A. Do you want me to list the --

18 Q. Just the people, yes.

19 A. The phones that are in this exhibit come  
20 back to Vincent Amen, Frank Cascio, Evelyn  
21 Tavasci/MJJ Productions, and Miss -- or the Hamid  
22 Mozaffarian phone number that we now believe or now  
23 know comes back to Brad Miller.

24 Q. Now, with regard to the -- the document 884  
25 that you put together, this is a digest or a  
26 compilation of the information from the exhibits I  
27 referred to, 452, 450, 456, and -- I believe those

28 are the ones; is that correct? 8511

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1 A. That's correct.

2 MR. SNEDDON: Your Honor, at this time I  
3 move this be put into evidence.

4 MR. SANGER: No objection, other than the  
5 previous objection.

6 THE COURT: All right. They're admitted,  
7 subject to the....

8 MR. SNEDDON: Oh, Bob? I showed you this  
9 earlier.

10 Your Honor, I have another document. It's  
11 885, and it's a 13-page document. I'm sorry, it's a  
12 22-page document. And I've shown that to counsel  
13 and I placed a blue number in the lower right-hand  
14 corner on each of the pages, 1 through 22.

15 Q. All right. Detective Bonner, have you --  
16 are you familiar with the Exhibit 885?

17 A. Yes, I am.

18 Q. And are you familiar with the pages -- or  
19 what it purports to represent of 1 through 22?

20 A. Yes.

21 Q. And these are diagrams, are they not?

22 A. Yes, they are.

23 Q. That reflect the information contained in  
24 Exhibit 884?

25 A. Correct.

26 Q. Between the parties?

27 A. Correct.

28 MR. SNEDDON: I'd move that 885 be placed 8512

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1 into evidence, Your Honor.

2 MR. SANGER: No objection.

3 THE COURT: It's admitted.

4 MR. ZONEN: Excuse me.

5 Q. BY MR. SNEDDON: Now, with regard to the  
6 information that's contained in the Exhibit 884-  
7 okay? - the source of that information is from  
8 exhibits that are in this case, correct?

9 A. Correct.

10 Q. And there are no exhibits in this case that  
11 show phone calls that are -- let me rephrase that.

12 Did you determine whether Mr. Cascio's phone  
13 was a cellular or a landline?

14 A. It's a cellular.

15 Q. And Mr. Amen's?

16 A. Again, a cellular phone.

17 Q. And the Tavasci phone?

18 A. It's a cellular phone.

19 Q. So these are cellular phones?

20 A. Correct.

21 Q. And the phone calls that are on this  
22 particular document are all cellular contacts; is  
23 that correct?

24 A. Correct.

25 Q. So these would be calls that are -- that  
26 show up on the user phone either Cascio, Tavasci or  
27 Amen, correct?

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1 Q. Calls either made by them to that number,  
2 (310) 490-0144, or calls placed by that number to  
3 them that show up on their telephone records,  
4 correct?

5 A. That's correct.

6 MR. SNEDDON: All right. Probably to the  
7 relief of everybody, I'm not going to go through all  
8 22 of these exhibits. I'm just going to show one on  
9 the Elmo, Your Honor, to illustrate the information  
10 that you've provided on document 884. And I'm  
11 selecting 3.

12 MR. SANGER: 15th?

13 MR. SNEDDON: Yeah.

14 Q. Okay. I've just taken the one that has a  
15 "3" in the lower right-hand corner. And this has  
16 the date of March 15, 2003, on it, correct?

17 A. Correct.

18 Q. And the -- obviously the cellular phones --  
19 there's a cellular phone, four phones, depicted on  
20 the exhibit?

21 A. That's correct.

22 Q. Now, tell the jury what these -- what the  
23 numbers that you placed on there reflect in terms of  
24 the information provided on the Exhibit 884, the  
25 telephones.

26 A. Basically there are two lines for each phone  
27 to each of the other phones -- or, I'm sorry, from

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28 Brad Miller's phone to each of the other phones. 8514

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1 There are directional arrows which indicate which  
2 direction the call went. And there are numbers  
3 associated with the arrows if there are any calls,  
4 and that will tell you how many calls went from each  
5 phone on that date.

6 Starting with the top connection between the  
7 Bradley Miller phone and the Frank Cascio phone, we  
8 have seven calls going from Cascio's phone to  
9 Miller's phone. And we have four calls going from  
10 Miller's phone to Cascio's phone.

11 With regard to the other two phones, there's  
12 a large zero in the center indicating there are no  
13 telephone calls to those phones.

14 Q. And was this the same approach that you took  
15 to all 22 charts that were prepared?

16 A. It is.

17 MR. SNEDDON: Okay. Could we have the  
18 lights, Your Honor?

19 Q. All right. Let's move on to another  
20 subject.

21 During the course of the investigation, were  
22 you assigned to review items of evidence that were  
23 seized from certain locations?

24 A. Yes, I was.

25 Q. And were you assigned to review some video  
26 footage that was obtained in the residence of Mr.  
27 Hamid Moslehi?

28 A. I was for Hamid also, yes. 8515

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1 Q. And did you review a -- some footage of a --  
2 that was filmed between Mr. Jackson and Mr. Bashir  
3 having a conversation?

4 A. Yes, I did. I should clarify that that  
5 actually came from Schaffel's residence.

6 Q. Oh, okay. It came from Mr. Schaffel's  
7 residence?

8 A. Correct.

9 Q. All right. So you reviewed that item?

10 A. Yes.

11 Q. And what is the item number of that  
12 associated with the sheriff's investigation?

13 A. Item No. 1360.

14 Q. And during the course of that conversation,  
15 or during the course of the review of that, did you  
16 actually see Mr. Jackson having a conversation with  
17 Mr. Bashir?

18 A. I did.

19 Q. And did the subject of flying come up during  
20 that conversation?

21 A. It did.

22 Q. And during the course of that conversation  
23 between Mr. Bashir and Mr. Jackson, did you hear  
24 anything said by Mr. Jackson with regard to alcohol?

25 A. I did.

26 Q. What did Mr. Jackson say?

27 A. I'll go ahead and read it from my report. I

28 quoted it. Mr. Jackson's statement was, "You don't 8516

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1 have, like, a little bit of Jesus Juice, a little  
2 bit of wine."

3 Q. Now, was there anywhere else on that video  
4 that you reviewed that the term "Jesus Juice" was  
5 used by anybody else?

6 A. No.

7 Q. You were also assigned the responsibility --  
8 give me a moment.

9 Are you familiar with an individual by the  
10 name of Louise Palanker?

11 A. Yes, I am.

12 Q. How did you become familiar with Ms.  
13 Palanker?

14 A. I interviewed Miss Palanker.

15 Q. Do you recall when that interview had  
16 occurred?

17 A. Not offhand. I know it was in the middle  
18 part of last year.

19 Q. And was it taped?

20 A. Yes, it was.

21 Q. And was that tape booked into evidence?

22 A. Yes, it was.

23 Q. And did you, at my request, review that  
24 tape?

25 A. I did.

26 Q. And what were you asked to review, looking  
27 for what?

28 A. I was asked to review any -- to find if 8517

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1 there was any statement to the effect that Janet  
2 Arvizo had sold the kids at the comedy camp or sold  
3 the kids at the hospital.

4 Q. Was the word "sold" or "seldom"?

5 A. The actual word used was "seldom"; that  
6 Janet was seldom at the comedy camp. Janet was  
7 seldom at the hospital.

8 Q. Could you spell that, please?

9 A. S-e-l-d-o-m.

10 Q. It was not s-e-l, apostrophe, i-m?

11 A. No.

12 Q. And you reviewed the tapes and ascertained  
13 that to be correct?

14 A. Yes.

15 MR. SNEDDON: Nothing further, Your Honor.

16

17 CROSS-EXAMINATION

18 BY MR. SANGER:

19 Q. Okay. Let's start with your first topic.

20 You had three topics, the first one being the cell  
21 phone records. The summary chart that was Exhibit  
22 885 that Mr. Sneddon put up, I believe he put page  
23 three up on the board, the summary charts?

24 A. Right here.

25 MR. SANGER: With the Court's permission, I  
26 could put up my copy, if that's all right.

27 THE COURT: That's fine.

28 MR. SANGER: And Mr. Sneddon, is this the 8518

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1 most recent?

2 MR. SNEDDON: (Nods head up and down.)

3 MR. SANGER: Okay.

4 Q. I'm going to put up page three, because

5 that's the one that was shown as a representative --

6 that was shown as a representative page and

7 there's -- actually, I forgot how many pages we were

8 told, but quite a number of pages to this, right?

9 A. 20 some-odd, I believe.

10 Q. 20 some-odd pages. When was this prepared?

11 A. Last night.

12 Q. And when was it delivered to defense

13 counsel?

14 A. I didn't deliver it, but I would assume this

15 morning.

16 Q. This morning. Okay. Now, 884 --

17 May I just put up the first page of that?

18 It would be my copy, if that's all right.

19 THE COURT: Yes.

20 MR. SANGER: Mr. Sneddon, this is the

21 correct --

22 MR. SNEDDON: Fine.

23 MR. SANGER: All right.

24 Q. 884 is a several-page -- I think a four-page

25 exhibit that has the summary of all the records,

26 correct?

27 A. Correct.

28 Q. And those were faxed to my house last night 8519

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1 by you, I believe; is that correct?

2 A. Yes, they were.

3 Q. And that would have been about 7:22 in the  
4 evening?

5 A. Correct.

6 Q. All right. On this summary chart --

7 And we can have lights again, if that's all  
8 right, Your Honor.

9 On this summary chart, you have a record of

10 phone calls that were made to and from what you've  
11 now determined -- what you've now labeled as the  
12 Bradley Miller telephone, correct?

13 A. Correct.

14 Q. Maybe it would be helpful, I'm sorry to do  
15 that, but if I could put up 885, that one page  
16 again. Because on these, you've now labeled which  
17 way they were going and the number going each way,  
18 correct?

19 A. Correct.

20 Q. All right. There you go. And you show four  
21 phones and those -- that same graphic is used for  
22 each of the pages; is that right?

23 A. Correct.

24 Q. That's why you have "0" here, because there  
25 were zero --

26 A. Correct.

27 Q. -- on this particular date.

28 On the other hand, this also tells us that 8520

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1 what you were able to analyze were calls going to  
2 and from what you've labeled as the Bradley Miller  
3 telephone, to and from the Vincent Amen telephone,  
4 the Evelyn Tavasci/MJJ PROD telephone, and the Frank  
5 Cascio telephone; is that correct?

6 A. Correct.

7 Q. Now, was there just one number to Evelyn  
8 Tavasci that you looked at?

9 A. That's the only number that came out.

10 Q. And that is a cell phone?

11 A. Yes.

12 Q. All right. Now, did you do this by  
13 analyzing just the records of the Amen, Tavasci and  
14 Cascio telephone?

15 A. We looked at every record that we have with  
16 the computer system, and these are the only three  
17 records that came out with any calls to that  
18 telephone.

19 Q. Okay. Do you have the records for what's  
20 called the Bradley Miller phone?

21 A. We only have a one-sheet piece of -- if  
22 we're talking about toll records, no, we do not. We  
23 do have a one-sheet page that tells us that it comes  
24 back to Hamid Mozaffarian, a cellular.

25 Q. And just because we have two Hamids we've  
26 talked about, Hamid Mozaffarian has nothing to do  
27 with Hamid Moslehi, correct?

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1 Q. I said, "Correct." I'm sorry. Let me ask  
2 the question, does Hamid Mozaffarian have anything  
3 to do with Hamid Moslehi?

4 A. No.

5 Q. Thank you.

6 Therefore, you did not have the records from  
7 that Miller phone to see what numbers the Miller  
8 phone called, correct?

9 A. Correct.

10 Q. Nor to see what incoming calls, if any, were  
11 recorded for that phone, correct?

12 A. Other than for these three telephones up  
13 here, no.

14 Q. I'm sorry, I'm saying for the Brad Miller  
15 phone itself, right?

16 A. No, but these records do show calls to and  
17 from the Bradley Miller phone. We don't have  
18 Bradley Miller's records, though.

19 Q. Thank you. That's what I was getting at.

20 I understand you have the other records.

21 But for Brad Miller you have one page that showed  
22 the subscriber information; is that correct?

23 A. Correct.

24 Q. Has that page been marked as an exhibit in  
25 this case --

26 A. I don't know.

27 Q. -- to your knowledge? Okay. All right. So

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28 therefore -- let me withdraw that. 8522

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1 The Geragos records -- you had records  
2 pertaining to the Law Firm of Geragos & Geragos,  
3 correct?

4 A. Correct.

5 Q. You didn't have the toll records, did you?

6 Did you --

7 A. I believe -- I believe they were actually  
8 sent. However, those were not -- we were not  
9 supposed to receive those, so we have not included  
10 those in any analysis.

11 Q. All right. Because Mr. Geragos' law firm  
12 has attorney-client privilege communications, I take  
13 it?

14 A. And more specifically in the warrant that I  
15 wrote, I laid out that we were not going to seek  
16 toll records.

17 Q. All right. And you did that because you  
18 understood that that might create a problem?

19 A. It could unless we were able to show him as  
20 being a member of a conspiracy.

21 Q. All right.

22 A. And part of the crime that occurred.

23 Q. All right. So the point being, that you did  
24 not have an opportunity to evaluate calls between  
25 Mr. Miller's phone, the one you've attributed to  
26 him, and the Geragos law firm?

27 A. Correct.

28 Q. In other words, you didn't have records 8523

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1 going either way on that one, right?

2 A. We have records. We did not analyze them,

3 yes.

4 Q. When I say "have," did you not have them to

5 look at and analyze and --

6 A. Correct.

7 Q. All right. And you did not have records

8 pertaining to any cell phones that Mr. Geragos might

9 have, correct?

10 A. Correct. Other than subscriber records. We

11 do see subscriber records on that also.

12 Q. And when you say that, that means it just

13 shows whose telephone number it is, right?

14 A. Correct.

15 Q. So therefore, did you not have available to

16 you to analyze records to determine the -- any calls

17 between Mr. Miller's phone and Mr. Geragos' cell

18 phone?

19 A. I'm having a slight problem with that,

20 because we did have the records. We simply set them

21 aside and did not use them with regard to the

22 Geragos records.

23 Q. And that was pursuant to the Court-ordered

24 search warrant that you requested; is that correct?

25 A. Right.

26 Q. So I think I used the word "have available

27 to analyze."

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28 A. I just want to clarify. They were sent, we 8524

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1 just did not use them.

2 Q. Okay. All right. So what we have here --

3 it's not a big thing, I just want to clarify this.

4 What we have here basically is the analysis of the

5 other records that -- for which there are toll

6 records showing communications with this phone, but

7 not any phone numbers associated with Geragos?

8 A. Correct.

9 Q. All right. Now --

10 THE COURT: Can we take a break?

11 MR. SANGER: That would be fine. But, Your

12 Honor, we do need to address the Court on one matter

13 briefly before or after we take the break.

14 THE COURT: All right. Let's let the jury go

15 ahead and take their break, I'll remain a moment.

16 Officer, you may step down.

17

18 (The following proceedings were held in

19 open court outside the presence and hearing of the

20 jury:)

21

22 THE COURT: All right.

23 MR. SANGER: Your Honor, I know this is the

24 fourth time, but I think you can see this coming.

25 The -- what's called the Hamid footage or the

26 outtakes footage that we had asked to play --

27 THE COURT: Yes.

28 MR. SANGER: -- we now have -- the 8525

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1 government has now quoted from that footage, and  
2 therefore we would ask to play the entire statement  
3 to put that -- those quotes in context.

4 And I know I've asked the Court before, and  
5 I don't mean to be rude.

6 THE COURT: I was just going to say, one more  
7 time, if it's the fourth time, you're keeping track.

8 MR. SANGER: Yes.

9 THE COURT: Not in the People's case.

10 MR. SANGER: Very well. I hope the Court  
11 understands, there was a reason, because they quoted  
12 from it.

13 THE COURT: Well, if you could isolate out  
14 one piece that has to do with that one piece.  
15 However, you have to remember that I watched all  
16 those outtakes, and I know how many hours and how  
17 much repetition is there.

18 MR. SANGER: Right.

19 THE COURT: So we're not talking about  
20 something I'm not totally familiar with. And if you  
21 want to take the time to go and find the material  
22 specifically that they're relating to and show a  
23 small portion that relates to that, that's fine.  
24 But that doesn't give you license to play hours and  
25 hours of that takeout -- outtake, whatever it's  
26 called.

27 MR. SANGER: I think it's like two hours and

28 45 minutes or something like that. 8526

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1 THE COURT: Well, it seemed like -- all  
2 right.

3 MR. SANGER: The second one -- I understand  
4 what the Court said. And please, Your Honor,  
5 understand we just learned this right now, that they  
6 were going to quote that section. So I'll have to  
7 see if I can find it and maybe do it later.

8 The second thing I wanted to address is  
9 there's been now a quote from the Louise Palanker  
10 tape. That is a shorter tape, and I do think it  
11 would be appropriate to play that. That's her  
12 interview.

13 THE COURT: I don't see that either. It's up  
14 to -- if is there anything specific you want to  
15 play, you know, in rebuttal to what they've just put  
16 on, or if there's some reason to play the whole tape  
17 in your case, you may, but I'll have to find out  
18 what it is. But one -- you know, just clarifying  
19 that one word doesn't call for the playing of the  
20 whole tape.

21 MR. SANGER: So having moved, those are  
22 denied and we're on a break.

23 THE COURT: Yes.

24 MR. SANGER: All right. Thank you.

25 (Recess taken.)

26 --o0o--

27

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1 REPORTER'S CERTIFICATE

2

3

4 THE PEOPLE OF THE STATE )

5 OF CALIFORNIA, )

6 Plaintiff, )

7 -vs- ) No. 1133603

8 MICHAEL JOE JACKSON, )

9 Defendant. )

10

11

12 I, MICHELE MATTSON McNEIL, RPR, CRR,

13 CSR #3304, Official Court Reporter, do hereby

14 certify:

15 That the foregoing pages 8477 through 8527

16 contain a true and correct transcript of the

17 proceedings had in the within and above-entitled

18 matter as by me taken down in shorthand writing at

19 said proceedings on May 3, 2005, and thereafter

20 reduced to typewriting by computer-aided

21 transcription under my direction.

22 DATED: Santa Maria, California,

23 May 3, 2005.

24

25

26

27 MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 IN AND FOR THE COUNTY OF SANTA BARBARA  
3 SANTA MARIA BRANCH; COOK STREET DIVISION  
4 DEPARTMENT SM-2 HON. RODNEY S. MELVILLE, JUDGE

5

6

7 THE PEOPLE OF THE STATE OF )

8 CALIFORNIA, )

9 Plaintiff, )

10 -vs- ) No. 1133603

11 MICHAEL JOE JACKSON, )

12 Defendant. )

13

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17 REPORTER'S TRANSCRIPT OF PROCEEDINGS

18

19 TUESDAY, MAY 3, 2005

20

21 8:30 A.M.

22

23 (PAGES 8529 THROUGH 8699)

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27 REPORTED MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

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1 I N D E X

2

3 Note: Mr. Sneddon is listed as "SN" on index.

4 Mr. Zonen is listed as "Z" on index. Mr. Auchincloss is listed as "A"  
on index.

5 Mr. Nicola is listed as "N" on index. Mr. Mesereau is listed as "M" on  
index.

6 Ms. Yu is listed as "Y" on index. Mr. Sanger is listed as "SA" on  
index.

7

8

9 PLAINTIFF'S

10 WITNESSES DIRECT CROSS REDIRECT RECROSS

11 ZELIS, Paul 8533-SA

12 (Re-called) (Continuing)

13 ROBEL, Steve (Re-called) 8537-SN 8545-M

14 O'BRYAN,

15 John Duross 8552-A 8601-M 8641-A

16 8659-A 8660-M (Further) (Further)

17 8662-A

18 (Further)

19 PROVENCIO, Rudy 8664-Z

20

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1 E X H I B I T S

2 FOR IN

PLAINTIFF'S NO. DESCRIPTION I.D. EVID.

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4 886 PowerPoint presentation 8664

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1 THE COURT: Go ahead.

2 MR. SANGER: May I proceed? Okay.

3 Q. All right. We're going to Point No. 2 of  
4 your testimony, which was video footage that you  
5 reviewed. And I think you established that you had  
6 obtained this from the evidence bookings that  
7 pertained to the Marc Schaffel residence; is that  
8 correct?

9 A. Correct.

10 Q. And what sheriff's identification number was  
11 on the item that you referred to?

12 A. Item 1316, 1-3-1-6.

13 Q. And Item 1316 is booked into sheriff's  
14 evidence, correct?

15 A. Correct.

16 Q. And it remains booked into sheriff's  
17 evidence as we sit here right now, correct?

18 A. The original is, yes.

19 Q. The original. And you gave us a copy of  
20 that, right?

21 A. Correct.

22 Q. And do you know if that's the same as your  
23 Sheriff's Item 913, -10, -11 and -12?

24 A. I don't know without reviewing materials.

25 Q. In any event, what you reviewed was -- it  
26 was a CD, or a DVD, or what?

27 A. The original, I believe, was either -- it

28 was a cassette tape. I don't recall if it was a 8533

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1 Beta cassette tape or a regular cassette tape.

2 Q. Okay. And you provided that, a copy of  
3 that, to us in the form of a DVD; is that right?

4 A. Correct.

5 Q. So the original is some kind of tape.

6 Now, what did you review? You didn't review  
7 a Beta cassette tape, did you?

8 A. I reviewed both, actually. I participated  
9 in the process of changing it over to the DVD format  
10 and watched it at that time.

11 Q. All right. But most recently when you  
12 reviewed it for this quote that you -- that you  
13 recited on direct examination, did you review the  
14 Beta cassette tape or the DVD?

15 A. The DVD.

16 Q. All right. And that's because Beta cassette  
17 tapes have to be played on some kind of a  
18 professional machine; is that right?

19 A. Correct. And we only have one, and it's in  
20 Santa Barbara.

21 Q. All right. So to lay the foundation here  
22 for something we'll do in the future, I understand  
23 that you will produce to the Court your Sheriff's  
24 Identification No. 1316, which is the original Beta  
25 cassette tape; is that correct?

26 A. Correct.

27 Q. And then you have a DVD that is -- how is

28 that labeled? 8534

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1 A. It would be labeled "Item 1316," and more  
2 specifically the actual title that was on the  
3 cassette tape in question.

4 Q. I'm sorry, I just want to make sure I'm  
5 clear, and I'm not clear.

6 If we say at some future date we would like  
7 to play this DVD that's in sheriff's evidence right  
8 now, how do we refer to it? 1316, the DVD? Or is  
9 there another number?

10 A. The most appropriate would be to say  
11 Item 1316 and then also provide the title,  
12 "MJ/Bashir, Summer 2003."

13 Q. All right. So that's what you reviewed.  
14 Now, I understand you did not review  
15 recently 913, -10, -11 and -12?

16 A. Correct.

17 Q. Which were sheriff's numbers. Did you ever  
18 review those?

19 A. I may have. I'm not certain at this point.

20 Q. All right. And then going to your third  
21 point, you referred to a Louise Palanker interview,  
22 correct?

23 A. Correct.

24 Q. And you and, I believe it was Detective  
25 Zelis, were present during this interview; is that  
26 correct?

27 A. That's correct.

28 Q. And it was surreptitiously tape-recorded, 8535

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1 correct?

2 A. Yes, it was.

3 Q. And how long did that interview last?

4 A. I believe it was approximately 40, 45  
5 minutes in length.

6 Q. And that particular item is on a DVD; is  
7 that right?

8 A. CD. Yes.

9 Q. CD. Was it recorded on a CD or --

10 A. It was recorded on a digital recorder and  
11 downloaded into CD format.

12 Q. Okay. So the actual item that is Sheriff's  
13 Item 1790 is the original recording; is that  
14 correct?

15 A. The CD recording.

16 Q. And that's in sheriff's evidence, booked  
17 into sheriff's evidence at the substation; is that  
18 correct?

19 A. Right.

20 Q. And you -- you agree to bring those to court  
21 for whatever purpose we'll use them in the future;  
22 is that correct?

23 A. Absolutely.

24 MR. SANGER: All right. Thank you.

25 Based on that, I have no further questions,

26 Your Honor.

27 MR. SNEDDON: Nothing further.

28 THE COURT: All right. You may step down. 8536

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1 MR. SNEDDON: Detective Robel.

2 THE COURT: You're still under oath. You may  
3 be seated.

4

5 STEVE ROBEL

6 Having been previously sworn, resumed the  
7 stand and testified further as follows:

8

9 DIRECT EXAMINATION

10 BY MR. SNEDDON:

11 Q. Detective Robel, during the course of this  
12 investigation, were you involved in an interview  
13 with Debbie Rowe?

14 A. Yes, I was.

15 Q. And was that interview tape-recorded?

16 A. Yes, it was.

17 Q. And was it tape-recorded with her knowledge?

18 A. Yes, it was.

19 Q. And who else was present during the taping?

20 A. Lieutenant Klapakis.

21 Q. And do you recall where that took place?

22 A. Yes.

23 Q. Where was that?

24 A. In Los Angeles.

25 Q. Do you recall what day that took place?

26 A. I believe it was on March the 3rd, 2004.

27 Q. So over a year ago?

28 A. Yes. 8537

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1 Q. All right. I'm going to ask you a few  
2 questions about that interview. First of all, were  
3 you asked to review that tape?

4 A. Yes, I was.

5 Q. And you were asked to review it in detail,  
6 correct?

7 A. That's correct.

8 Q. And did you do that?

9 A. Yes, I did.

10 Q. And when did you do that?

11 A. Yesterday.

12 Q. And did you compare it to a transcript?

13 A. Yes, I did.

14 Q. Now, during that conversation that you had  
15 with Miss Rowe, did she at any time during the  
16 course of that transcript describe the defendant as  
17 a good parent?

18 A. No, she didn't.

19 Q. At any time during that conversation that  
20 you had with her over a year ago did she describe  
21 him as a wonderful father?

22 A. No, she didn't.

23 Q. At any time during the course of that  
24 interview with her over a year ago, did she describe  
25 him as a caring person?

26 A. No.

27 Q. And does she at any time during that

28 interview use the word "generous" to describe the 8538

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1 defendant?

2 A. No.

3 Q. During the course of the conversation that  
4 you had with Miss Rowe over a year ago, did she  
5 express to you, during the course of that interview,  
6 comments about her concerns of his parenting skills?

7 MR. MESEREAU: Objection; leading.

8 THE COURT: Overruled.

9 THE WITNESS: Yes.

10 Q. BY MR. SNEDDON: And in particular, what did  
11 she say?

12 MR. MESEREAU: Objection. Opinion;  
13 relevance.

14 THE COURT: Overruled.

15 You may answer.

16 THE WITNESS: She referred to Michael as a  
17 sociopath and his children as being possessions.

18 Q. BY MR. SNEDDON: Did she at other points  
19 during the conversation express any other areas of  
20 concern --

21 A. Yes.

22 Q. -- about the defendant and the children's  
23 relationship?

24 A. Yes, she did.

25 Q. How many different areas did she talk about?  
26 Without going into the details of what she talked  
27 about, the areas, how many areas of concern?

28 A. I recall there were three. 8539

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1 Q. And did each one of those reflect negatively  
2 upon the defendant's parenting skills?

3 MR. MESEREAU: Objection; leading.

4 THE COURT: Calls for a conclusion,  
5 sustained.

6 Q. BY MR. SNEDDON: Were those three areas  
7 discussed in the context of him being a good or a  
8 bad parent?

9 A. Yes.

10 Q. And was it good or bad?

11 A. It was bad.

12 Q. During the course of the interview with  
13 Miss Rowe, did you discuss the topic of whether or  
14 not the comments that she made during the course of  
15 her interview that was included in the Maury Povich  
16 program were truthful?

17 MR. MESEREAU: Objection; leading.

18 MR. SNEDDON: Let me rephrase that, Judge.

19 I need to rephrase it anyhow, to be correct.

20 Q. During the course of your interview with  
21 Miss Rowe over a year ago, did you discuss with her  
22 the topic of the truthfulness of her statements made  
23 during the time -- the nine-hour interview that  
24 occurred at Mr. Schaffel's house?

25 A. Yes, I did.

26 Q. And what did she say?

27 A. She told me that she had a plan since she

28 got divorced from Michael in 1999. 8540

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1 Q. Did she tell you who made the plan up?

2 A. Yes.

3 Q. Who?

4 A. She and Mr. Jackson.

5 Q. Together?

6 A. Yes.

7 Q. And what was the plan?

8 MR. MESEREAU: Objection. Relevance;

9 foundation.

10 MR. SNEDDON: Your Honor, this is

11 impeachment.

12 THE COURT: I'm going to sustain the

13 objection. I don't understand how that question

14 could lead to an answer that would impeach something

15 she said in front of this jury.

16 MR. SNEDDON: That the comments were

17 truthful.

18 THE COURT: But that's not the question

19 that's been asked. You asked about a plan she had

20 with Mr. Jackson. So I'm sustaining the objection.

21 Q. BY MR. SNEDDON: Were you present during

22 Miss Rowe's testimony here in court?

23 A. Yes, I was.

24 Q. And did you hear Miss Rowe testify about the

25 statements that she made during that nine-hour

26 interview?

27 A. Yes.

28 Q. And you heard her testify that those 8541

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1 statements were -- were truthful in court?

2 A. Correct.

3 Q. Now, did you have a conversation with Miss  
4 Rowe over a year ago when she told you about the  
5 comments -- about the same comments that she made in  
6 court here and whether they were truthful or not?

7 MR. MESEREAU: Objection. Misstates the  
8 evidence, leading, and vague.

9 MR. SNEDDON: Let me rephrase it, Judge.

10 I might be able to solve the problem.

11 Q. During your conversation with Miss Rowe, did  
12 she say anything to you that was inconsistent with  
13 her statement in this courtroom that those  
14 statements were true when she made them on the film?

15 A. Yes.

16 Q. What did she say?

17 MR. MESEREAU: Objection. Calls for a  
18 narrative; vague.

19 THE COURT: Overruled.

20 THE WITNESS: She said that she and Mr.  
21 Jackson, when they got divorced, that they had a  
22 plan --

23 MR. MESEREAU: Objection. Same objection as  
24 before. He's trying to answer the same question,  
25 Your Honor.

26 THE COURT: Sustained.

27 Q. BY MR. SNEDDON: All right. You told us all

28 about the plan. Tell us what she said after the 8542

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1 plan.

2 A. She said she --

3 MR. MESEREAU: Objection; vague.

4 THE COURT: Overruled.

5 You may answer.

6 THE WITNESS: That she stuck with her plan

7 to talk positive about Mr. Jackson, as she's done

8 throughout news conferences that she's had since

9 they were divorced.

10 Q. BY MR. SNEDDON: Did she indicate to you

11 during this conversation whether those statements

12 were true or false?

13 A. Yes, she did.

14 Q. What did she say?

15 A. And she says that they were false.

16 Q. All right. I want to go on to another

17 subject. Excuse me just a second.

18 All right. Sergeant Robel, I'm handing you

19 the exhibit book. First of all, you recognize those

20 as being the Neverland Ranch logs, correct?

21 A. Yes, I do.

22 Q. Now, during the course of the search warrant

23 at the ranch on November 18th of 2003, were certain

24 logs seized from the ranch?

25 A. Yes, there were.

26 Q. You're aware of that?

27 A. Yes, I am.

28 Q. And you reviewed those logs, as a matter of 8543

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1 fact, have you not?

2 A. Yes, I have.

3 Q. And do any of the logs that you reviewed  
4 that were seized from the ranch go beyond the date  
5 of January 1st, 2003?

6 A. No.

7 Q. Now, there's a medical report, one-page  
8 medical report that does, but all the logs  
9 themselves were before, correct?

10 A. That is correct.

11 Q. During the course of this investigation,  
12 did, to your knowledge, the Santa Barbara Sheriff's  
13 Department in any other search warrant seize any  
14 records or logs associated with the months of  
15 January, February or March of 2003?

16 A. No.

17 Q. Now, in the exhibit book, towards the end,  
18 there are logs for the months of February and March  
19 of 2003, correct?

20 A. Yes.

21 Q. And what exhibit numbers, what two exhibit  
22 numbers are those? They should be tabbed.

23 A. 335 and 334.

24 Q. And those logs are log entries from the year  
25 2003, correct?

26 A. That is correct.

27 Q. And those have been described by Mr. Sanger

28 as being government documents. Do you know where 8544

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1 they came from?

2 A. Yes, I do.

3 Q. Where did they come from?

4 A. It came from the defense.

5 Q. Do you recall when it was that we obtained

6 those records from the defense?

7 A. Yes.

8 Q. When?

9 A. To the best of my recollection, I believe it

10 was about three to four months prior to us starting

11 trial.

12 Q. Months?

13 A. Actually, excuse me. I'm sorry. Weeks.

14 Q. So they've been in the defense possession

15 for over a year?

16 A. That is correct.

17 MR. SNEDDON: Nothing further.

18

19 CROSS-EXAMINATION

20 BY MR. MESEREAU:

21 Q. What is the date of your interview with

22 Debbie Rowe?

23 A. March the 3rd, 2004.

24 Q. Did you do an interview with her on

25 February 23rd, 2004?

26 A. Yes, that was a -- I talked with her on the

27 phone.

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28 Q. And that was recorded, correct? 8545

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1 A. That was not recorded.

2 Q. The transcript -- do you have a transcript  
3 of the interview you're referring to?

4 A. Yes, I do.

5 Q. And could I --

6 May I approach, Your Honor, just to take a  
7 look at the transcript?

8 THE COURT: Yes.

9 Q. BY MR. MESEREAU: Okay. And you say you  
10 just listened to the tape the other evening?

11 A. I listened to it yesterday.

12 Q. Do you ever ask the question, "Is Michael a  
13 good parent?"

14 A. I don't recall asking that.

15 Q. You never had a conversation with her about  
16 his parenting skills at all, did you?

17 A. I don't recall asking that question.

18 Q. Okay. In response to the prosecutor's  
19 question to you, you indicated that Ms. Rowe, during  
20 your conversation, had not said some of the things  
21 she said in open court, correct?

22 A. Correct.

23 Q. But there are things she said in open court  
24 that you didn't ask her about in your interview,  
25 correct?

26 A. Correct.

27 Q. She said Michael Jackson was generous in

28 open court. Do you remember that? 8546

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1 A. Yes.

2 Q. You never asked her if Michael Jackson was  
3 generous, did you?

4 A. I don't recall asking that.

5 Q. She said that Michael Jackson was her  
6 friend, correct?

7 A. Correct.

8 Q. You never asked her in your interview if  
9 Michael Jackson was her friend, right?

10 A. I don't recall asking that.

11 Q. In fact, at one point in your interview, she  
12 said she wasn't really supposed to talk a lot about  
13 Michael Jackson, because her lawyer had advised her  
14 as such, right?

15 A. Correct.

16 Q. And when she said that to you, you didn't  
17 ask her a lot of questions about Michael Jackson as  
18 a person after that, right?

19 A. She volunteered some of the stuff.

20 Q. Now, at that particular point in time, did  
21 you know when she had last seen Michael Jackson?

22 Excuse me, let me rephrase that better.

23 At the point in time when you interviewed  
24 Debbie Rowe, did you know when she had last seen  
25 Michael Jackson?

26 A. I believe that she had told us that it had  
27 been two to three years.

28 Q. Now, at the particular point in time when 8547

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1 you interviewed Debbie Rowe, she was rather upset  
2 about their family law proceeding, true?

3 A. No, I don't think that's correct.

4 Q. Do you remember she said to you, "Officer,

5 I have Michael's Achilles tendon, I have the kids.

6 I don't have them, but I'm going to have them." Do  
7 you remember that?

8 A. I remember something to that effect.

9 Q. Isn't that what she said to you?

10 A. She did, Mr. Mesereau, but I don't believe

11 that her child custody issue was going on at that  
12 time.

13 Q. Well, she told you she had a lawyer named

14 Iris Finsilver, did she not?

15 A. Yes, she did.

16 Q. Did you know why she had a lawyer named Iris

17 Finsilver?

18 A. At the time I knew she had her because of

19 the filming that she participated in where Iris was  
20 present.

21 Q. She told you in that interview that she was

22 in a dispute with Mr. Jackson about the children,

23 right?

24 A. I don't recall that.

25 Q. Did you know she was in a dispute with Mr.

26 Jackson about the children when you conducted that

27 discussion with Debbie Rowe?

28 A. To the best of my knowledge, I want to say 8548

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1 that I did not.

2 Q. Do you recall in the first page of your  
3 interview -- and in my transcript it's page one. I  
4 don't know what page it is in yours. It's a  
5 different transcript.

6 Do you recall she says -- let me try and  
7 restate that.

8 Look at the fourth quote down of Debbie  
9 Rowe. It starts with, "Iris." Do you see that?

10 A. It said, "Iris, I..."

11 Q. Yes, exactly.

12 A. Okay. I'm there.

13 Q. She says, "F-u-c-k his defense at this  
14 point. I want the kids." Do you see that?

15 A. Yes, I do.

16 Q. Did you think that might have some relevance  
17 to a dispute between Mr. Jackson and Ms. Rowe when  
18 you heard her say that?

19 A. By reading it, you could interpret that, but  
20 at the time I did not.

21 Q. Okay. And this was the conversation where  
22 she talked about Janet Arvizo's history of  
23 orchestrating lawsuits, correct?

24 MR. SNEDDON: Your Honor, I'm going to  
25 object as beyond the scope of direct examination.

26 We were very pointed in our questions.

27 THE COURT: Sustained.

28 Q. BY MR. MESEREAU: This was a conversation 8549

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1 where she said, "Michael is very easily  
2 manipulated," true?

3 MR. SNEDDON: Object. Same objection.

4 THE COURT: Sustained.

5 Q. BY MR. MESEREAU: Now, do you remember

6 Ms. Rowe in this conversation responding to your  
7 question, "Is Michael the kind of person that would  
8 keep a journal?" Do you remember that?

9 A. I do remember that.

10 Q. And she said, "He doesn't keep a journal.

11 He's not organized enough to keep a journal." Do  
12 you remember that?

13 MR. SNEDDON: Object. Same objection.

14 MR. MESEREAU: I think it's all in -- they

15 opened the door on this conversation about Mr.  
16 Jackson, Your Honor.

17 THE COURT: I'm having the same difficulty  
18 with you as I'm having with the District Attorney.

19 I can't really tell where you're going from that  
20 question, and it appears to be beyond the scope. So  
21 I'll sustain the objection. If you can rephrase it  
22 so I can see it better, that's fine.

23 Q. BY MR. MESEREAU: Ms. Arvizo -- excuse me.

24 Ms. Rowe --

25 Let me start again. How did this  
26 conversation originate? Did you call her?

27 A. For this particular interview?

28 Q. Yes. 8550

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1 A. Yes. We had a phone discussion, and she  
2 agreed to meet with me on a specific date and time.

3 Q. And where did she meet you?

4 A. In the Los Angeles area, Calabasas.

5 Q. Was her attorney there?

6 A. No.

7 Q. Okay. But you begin the conversation with  
8 reference to her attorney, correct? Really on the  
9 first page. The sentence we just discussed where it  
10 starts by saying, "Iris...."

11 A. Correct.

12 Q. You discussed her attorney almost at the  
13 very beginning of the interview, correct?

14 MR. SNEDDON: Your Honor, I object. Asked  
15 and answered.

16 THE COURT: Sustained.

17 Q. BY MR. MESEREAU: And this was the interview  
18 where she talked about Schaffel and Konitzer and  
19 Dieter trying to steal from Mr. Jackson, correct?

20 MR. SNEDDON: Object, Your Honor, beyond the  
21 scope.

22 THE COURT: Sustained.

23 MR. SNEDDON: Ask the Court to admonish  
24 counsel. This --

25 THE COURT: Next question.

26 MR. MESEREAU: Yes. No further questions,  
27 Your Honor.

28 MR. SNEDDON: Nothing further, Your Honor. 8551

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1 THE COURT: You may step down.

2 MR. AUCHINCLOSS: Your Honor, we call as our  
3 next witness Duross O'Bryan.

4 THE COURT: When you get to the witness  
5 stand, remain standing.

6 Face the clerk here and raise your right  
7 hand.

8

9 JOHN DUROSS O'BRYAN

10 Having been sworn, testified as follows:

11

12 THE WITNESS: I do.

13 THE CLERK: Please be seated. State and  
14 spell your name for the record.

15 THE WITNESS: John Duross O'Bryan. J-o-h-n;

16 D-u-r-o-s-s; O-B-r-y-a-n.

17 THE CLERK: Thank you.

18

19 DIRECT EXAMINATION

20 BY MR. AUCHINCLOSS:

21 Q. Good morning, Mr. O'Bryan.

22 A. Good morning.

23 Q. What is your occupation, please?

24 A. I am a certified public accountant in the  
25 State of California.

26 Q. And by whom are you employed?

27 A. With the firm of Alex Partners.

28 Q. Tell us a little bit about Alex Partners, if 8552

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1 you would.

2 A. Alex Partners is an international financial  
3 consulting firm.

4 Q. And what is your title with Alex Partners?

5 A. I am a managing director.

6 Q. Prior to joining Alex Partners, did you work  
7 with other accounting firms?

8 A. I did, yes.

9 Q. And what were their names?

10 A. I started my career in 1978 with the  
11 international public accounting firm of Peat,  
12 Marwick, Mitchell & Co., now called KPMG. I was  
13 there for approximately six or seven years. And I  
14 went off to my own firm for about nine months to a  
15 year. And then joined the international public  
16 accounting firm of Coopers & Lybrand, which merged  
17 and it's now Pricewaterhouse Coopers. I was with  
18 them basically from 1985 through 2003.

19 Q. So what type of firms are KPMG and  
20 Pricewaterhouse Coopers?

21 A. They were referred to as The Big 8  
22 accounting firms, which are the large accounting  
23 firms. They're international, both domestic and  
24 abroad, all over the world.

25 Q. All right. Let's start with KPMG. Can you  
26 tell us a little bit about your experiences there?

27 A. As I mentioned, I started in 1978, and I was

28 really auditing, which is accounting. I have a 8553

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1 accounting degree. I worked auditing companies'  
2 financial statements, auditing individuals'  
3 financial statements, and effectively auditing those  
4 numbers to make sure they are accurate and in  
5 conformity with accounting guidelines.

6 Q. How would you give a lay definition of what  
7 an audit is, general terms?

8 A. An audit is basically a function performed  
9 by auditors, CPAs that work principally with The  
10 Big 8, or now I think they call them The Final 4  
11 accounting firms, that simply looks at, on a test  
12 basis, transactions and support the company's  
13 financial statements, and then gives an opinion  
14 about the accuracy of those financial statements,  
15 whether or not they are accurate and whether or not,  
16 in fact, they conform with what's called generally  
17 accepted accounting principles.

18 Q. Tell us a little bit about your experiences  
19 at Pricewaterhouse Coopers.

20 A. I started with Pricewaterhouse Coopers in  
21 1985, or the predecessor firm. I was there through  
22 2003. I continued doing audits through  
23 approximately 2000, 2001. And in about 1988,  
24 October the 1st of 1988, I was admitted to the  
25 partnership. And on and around that time, I was  
26 also asked to begin working, assisting individuals  
27 and/or companies in what's called disputes,

28 litigation matters, whether or not there's damages, 8554

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1 malpractice issues, whether or not an accountant did  
2 something wrong, any type of matter involving a  
3 dispute or an investigation.

4 Q. Have you participated in financial  
5 accounting investigations?

6 A. I have, yes, on several occasions.

7 Q. And as it relates to financial advisory  
8 services - I think you mentioned that - what kind of  
9 engagements have you worked?

10 A. Financial advisory services was one of the  
11 divisions within The Big 4 firms. I was in charge  
12 of that in both Los Angeles and in New York. That  
13 division does dispute analysis and investigation,  
14 work investigations that we're talking about. It  
15 also does due diligence work, mergers and  
16 acquisitions, bankruptcy work valuation, et cetera.  
17 I was involved in most of those practices of  
18 being the partner in charge. But certainly  
19 specifically as a partner responsible, I worked on  
20 most of those engagements, those type of  
21 engagements.

22 Q. Do those engagements include forensic  
23 accounting investigations?

24 A. They do, yes. One of the -- the title  
25 "DA&I," the "I" stands for investigation, which is  
26 an accounting investigation of financial records.

27 Q. Okay. So tell us what specifically you mean

28 when you say "a forensic accounting investigation." 8555

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1 A. Well, if an audit is really looking at a  
2 company's financial statements and looking on a test  
3 basis to be able to opine as to the accuracy and  
4 conformity with those financial statements with  
5 accounting principles, a forensic accounting  
6 investigation is completely different. It basically  
7 looks at all the records you can possibly get, all  
8 of the information you can possibly get, and it  
9 attempts to reconstruct what happened and what went  
10 on in any period of time.

11 So the scope is completely different and the  
12 type of procedures are completely different. It's  
13 much more invasive. It's much more intrusive. And  
14 it is really, in fact, an investigation, not a  
15 sampling of documents like an audit is.

16 Q. So can you give us an idea of what kind of  
17 forensic accounting investigation you have  
18 participated in?

19 A. I've participated in dozens. Some of them  
20 involving thousands of dollars at issue, some of  
21 them involving billions of dollars at issue, and  
22 companies small and large, public, private, and not  
23 for profit.

24 Q. And are these investigations primarily for  
25 the purposes of litigation, prelitigation,  
26 testifying in court, that type of thing?

27 A. Some of them involve litigation. Probably

28 most of them do. But there's a vast majority that 8556

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1 could just be an investigation that the company has  
2 authorized or the company is asking for or  
3 individuals are asking for to ask what's going on  
4 within their company. So it may not be a litigation  
5 or it may not be a civil or criminal matter. It  
6 could simply be that the company is interested in  
7 what's going on in their business and asked to have  
8 an investigation performed.

9 Q. Have you previously been asked to testify in  
10 California courts or in courts around the country as  
11 an expert in the area of a forensic accounting  
12 investigation?

13 A. I have, yes, on several occasions.

14 Q. Do you have an accounting degree?

15 A. I do, yes. I have a Bachelor of Science  
16 degree in accountancy from Northern Arizona  
17 University.

18 Q. Presently what are your hourly rates at Alex  
19 Partners?

20 A. My rate on this engagement is \$385 an hour.

21 Q. Okay. I'll try to be quick then.

22 How many hours have you put into this  
23 investigation or into this particular task?

24 A. I've put in probably 20 to 30 hours  
25 possibly.

26 Q. Okay. So tell us about your assignment in  
27 this particular case, the case of People v. Jackson.

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28 Specifically what were you asked to do in this 8557

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1 matter?

2 A. I was asked to look at the financial  
3 condition of Mr. Jackson leading up to February  
4 2003.

5 Q. All right. And did you prepare a PowerPoint  
6 presentation to assist the jury in describing just  
7 exactly what you did in this case?

8 A. I did, yes.

9 Q. All right. Would you consider this to be a  
10 forensic accounting investigation?

11 A. The work that we performed was absolutely a  
12 forensic accounting investigation, yes.

13 Q. And have you ever performed other work that  
14 entailed a similar task, looking at someone's  
15 personal finances for forensic purposes?

16 A. Absolutely, yes.

17 Q. Okay. So let's talk about some terminology.

18 What does the term "financial condition" mean for  
19 purposes of your testimony here today?

20 A. I'm defining "financial condition" as  
21 basically an individual's assets, their liabilities,  
22 their net worth. One's net worth is simply the  
23 difference between their assets and liabilities. If  
24 you have more assets than liabilities, you have  
25 positive net worth. If you have more liabilities  
26 than assets, you have negative net worth.

27 So we look at the assets and the

28 liabilities. We look at the income. We look at the 8558

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1 expenditures. That's how I would really define  
2 one's financial condition, and really how those all  
3 interrelate and what kind of condition they're in.

4 Can they afford to pay their bills, et cetera.

5 Q. You're going to be, I'm sure, throwing these  
6 words around, so I want to make sure everybody's  
7 clear on them.

8 Assets, would that just be -- a simple way  
9 of saying assets, would that be property that  
10 someone owns?

11 A. Yeah, I'm sorry. Assets are really anything  
12 that is an asset, which is your house, a car,  
13 artwork, intangible things like maybe a copyright.

14 Anything that creates benefit to you is an asset.

15 And so that's what I'm referring to as an asset.

16 A liability is just the opposite of that.

17 It is something that's an obligation. You owe  
18 something, somebody something, meaning a bank for  
19 your mortgage on your house, a lease on your car,  
20 a loan securing some of the copyright things that  
21 you have. Any of those there becomes obligations,  
22 things that you actually have to pay for.

23 And then the difference between the two is  
24 simply a mathematical function of assets minus  
25 liabilities equals net worth.

26 Q. Okay. And can a net worth be positive as  
27 well as negative?

28 A. Yes. As I mentioned -- 8559

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1 Q. Go ahead.

2 A. -- if you have more assets than liabilities,  
3 conceptually, if you gain the value of all of those  
4 assets at whatever is stated, say you have \$100  
5 worth of assets, and you can really get \$100 for  
6 those assets, and you have \$50 worth of liabilities,  
7 and you're really only going to pay \$50, then you  
8 have a net worth of \$50. At the end of the day, you  
9 have \$50 cash sitting in your hand.

10 On the other hand, you could have a  
11 situation where your assets are \$50, and you'll only  
12 get \$50 for them. You really are going to pay \$100  
13 in liabilities, and therefore you have a negative  
14 net worth. At the end of the day, you will be short  
15 \$50, or negative net worth.

16 Q. All right. Before we get into your  
17 opinions, let's talk generally about how you conduct  
18 a forensic investigation of this type.  
19 Typically how would you start a financial  
20 forensic accounting investigation?

21 A. Well, you ask for as many documents as you  
22 can get, because again, it's not a sampling of  
23 documents. It's everything you can possibly look  
24 at. And you get as much information as you possibly  
25 can during that relevant period of time. And the  
26 place we typically like to start with is a set of  
27 financial statements, and those being a balance

28 sheet on an income statement, potentially to help us 8560

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1 understand what's going on within that company or  
2 that individual's financial condition position.

3 Q. Okay. I think maybe this would be a good  
4 point to segue into your PowerPoint presentation.

5 MR. MESEREAU: Objection. Foundation;  
6 relevance; Court ruling.

7 THE COURT: The PowerPoint presentation is --  
8 what does it consist of?

9 MR. AUCHINCLOSS: It consists strictly of  
10 some basic information about what Mr. O'Bryan does.

11 It also describes his expert opinions in this  
12 matter, and it also includes the specific  
13 information that he relied upon in forming those  
14 opinions.

15 THE COURT: So it's demonstrative of his  
16 testimony?

17 MR. AUCHINCLOSS: Yes, it is, Your Honor.

18 THE COURT: Have you seen the presentation?  
19 Have you seen the materials?

20 MR. MESEREAU: I was handed a couple of  
21 documents that -- I think that has it.

22 MR. AUCHINCLOSS: Yes, I provided it to  
23 counsel yesterday. Actually, day before yesterday.

24 THE COURT: Generally, this is the kind of  
25 thing that if the witness was given a piece of  
26 chalk, he could go to the blackboard and, as he  
27 testified, put this up.

28 MR. MESEREAU: He's referencing select 8561

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1 paragraphs from documents, one after another,  
2 without showing the whole document, and that would  
3 be one of our objections as well.

4 MR. AUCHINCLOSS: And if counsel wishes to  
5 introduce those documents at the end of his  
6 cross-examination, I don't think we'll have an  
7 objection to that.

8 THE COURT: I'll let you go forward with it  
9 on my theory that it's the type of help a witness  
10 normally could do with a piece of chalk or a marker  
11 and some butcher paper, but in these days we do it  
12 with PowerPoint. If it appears to be something  
13 beyond that type, I'll have to reevaluate it.

14 MR. AUCHINCLOSS: Very well.

15 MR. MESEREAU: Thank you, Your Honor.

16 MR. AUCHINCLOSS: All right. If we could  
17 have "Input 1," Your Honor.

18 All right. If I may approach, Your Honor,  
19 and provide the laser pointer to the witness.

20 Q. I'll give you this to use, if you wish.

21 If you could, Mr. O'Bryan, please take us  
22 through the components of a financial statement.

23 A. The components of a financial statement, as  
24 shown up on the board, are really made up of four  
25 different components, the first being the balance  
26 sheet. And all that is is a statement, part of the  
27 financial statements that are typically referred to

28 in a set of financial statements, that lists out the 8562

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1 assets and the liabilities, and then shows net  
2 worth. And it literally does balance. That's why  
3 they call it a balance sheet, because the total of  
4 assets will equal the total of liabilities plus net  
5 worth, so it balances. So it's simply a listing of  
6 assets and liabilities, and then it shows net worth  
7 as the difference.

8 Q. Before we --

9 THE COURT: I'm sorry, before you ask the  
10 next question - I thought you were through with your  
11 answer - I want to have Mr. Sneddon and Mr. Mesereau  
12 approach for a moment.

13 (Discussion held off the record at sidebar.)

14 THE COURT: All right, Counsel. Go ahead.

15 MR. AUCHINCLOSS: All right. Thank you,  
16 Your Honor.

17 Q. I think we were at income statement.

18 A. And the second set of -- the second  
19 statement within a set of financial statements is an  
20 income statement, and that simply lists out all of  
21 an individual's or company's income or revenues, and  
22 it subtracts out all of the expenditures or  
23 expenses. And the difference between those two is  
24 either a net income or a net loss. So that's the  
25 income statement.

26 The third is what's called a statement of  
27 cash flows. It is simply a statement that shows

28 cash, and where cash came in and where cash goes 8563

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1 out. And at the end of the year, it shows what the  
2 ending cash balance is. Just cash.

3 And then the last component of a set of  
4 financial statements is notes. And those notes are  
5 a narrative addition to all of the numbers, and  
6 they're simply informative. They simply tell you  
7 the basis that the financial statements are put  
8 together and some of the different accounting  
9 policies and principles used in accumulating the  
10 financial statements.

11 Q. All right. Let's look at the next slide.

12 What do you look for in these financial statements?

13 A. You first try to get an understanding of the  
14 business, or the assets and liabilities. You then  
15 look at the significant assets and liabilities and  
16 try and understand what those are. You look for  
17 unusual relationships, ones that you should do  
18 additional information and/or additional research  
19 on. And then lastly, you just look for unusual  
20 issues that should be considered during your  
21 investigation.

22 Q. All right. In this particular  
23 investigation, were you able to find any financial  
24 statements?

25 A. We did, yes. We found a June 30th, 2002,  
26 financial statement.

27 Q. All right. What type of financial statement

28 was this? 8564

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1 A. It was a balance sheet only. Just that  
2 first statement, just the balance sheet showing  
3 assets and liabilities.

4 Q. Okay.

5 A. And net worth.

6 Q. And that's what you've described as being  
7 balancing out. Subtract the liabilities from the  
8 assets, you have a net worth?

9 A. That's correct.

10 Q. Okay. So let's talk about what this  
11 particular June 30th, '02, balance sheet said about  
12 Mr. Jackson's assets and liabilities.

13 MR. MESEREAU: Your Honor, could we have the  
14 exhibit marked?

15 THE COURT: Yes.

16 MR. AUCHINCLOSS: Certainly.

17 MR. MESEREAU: We'll renew our objection  
18 based on the Court's ruling.

19 THE COURT: Yeah. The ruling that you're  
20 talking to me about is the ruling limiting the  
21 financial presentation.

22 MR. MESEREAU: Yes, Your Honor.

23 THE COURT: He's made an offer of proof in  
24 his written materials that is within the scope of  
25 what I anticipated him to do.

26 The problem and the reason I have blacked  
27 out the screen is that if you're relying on

28 documents that are evidentiary in nature in your 8565

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1 presentation, they first must be introduced into  
2 evidence. The witness wouldn't be allowed to put  
3 parts of a document in evidence that is not in  
4 evidence. So....

5 MR. AUCHINCLOSS: I would just say that this  
6 is offered as expert testimony. And expert  
7 testimony may be based upon inadmissible evidence  
8 that's not normally admissible. And these are the  
9 specific documents that he is basing his opinions  
10 on, including hearsay and a variety of other -- so  
11 typically the --

12 THE COURT: But usually -- all right. Go  
13 ahead. The foundation for the figures is what I was  
14 looking for.

15 MR. AUCHINCLOSS: All right.

16 THE COURT: The objection is overruled.

17 Q. BY MR. AUCHINCLOSS: All right. Going back  
18 to your consideration of this particular balance  
19 sheet, tell us what it said in terms of Mr.  
20 Jackson's assets versus liabilities at that  
21 particular date.

22 A. This showed that as of June 30th, 2002,  
23 there was \$130,000,000 in assets, \$415,000,000 in  
24 liabilities, and a negative net worth of  
25 \$285,000,000.

26 Q. Okay. Now, as far as this balance sheet  
27 goes, does it mean that Mr. Jackson is, by virtue of

28 that balance sheet, bankrupt? 8566

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1 A. No, it doesn't.

2 Q. Why do you say that?

3 A. Because the balance sheet is prepared on  
4 what's called a cash basis, or an income tax basis.

5 And that means that the assets are actually listed  
6 at their cost, not necessarily their fair market

7 value. So those assets could have higher values,

8 and they could have lower values. The liabilities

9 could have higher values; they could have lower

10 values. It's just a cash basis. In other words,

11 what was paid for the assets. So, no, it does not

12 mean that. You have to look at it more from a fair

13 market value.

14 Q. So this does not mean Mr. Jackson has

15 \$285,000,000 more liabilities than assets at this

16 time?

17 A. The statement shows that. However, you

18 know, it's on a cash basis, which means if you want

19 to get into the real world, you have to look at it

20 more from a fair market value perspective.

21 Q. Okay. So as a beginning point to your

22 investigation, would a balance sheet like that be a

23 cause of any concern?

24 A. You certainly look at it and question as to

25 why there's a negative \$285,000,000 net worth. I

26 mean, that's certainly a concern and a

27 consideration. But it simply means that more

28 investigation needs to take place. 8567

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1 Q. Were there other documents that you were  
2 able to review to give you a better picture of Mr.  
3 Jackson's financial condition?

4 A. Yes. I mean, we weren't -- we asked for  
5 things such as bank statements and general ledgers,  
6 which is a group of transactions that gets  
7 accumulated to become the financial statements.

8 We asked for those types of things. We were  
9 not given those. We have not seen those. However,

10 we did see about four to five boxes of other  
11 documents that were principally correspondence  
12 between Mr. Jackson's financial advisors and some of  
13 his advisors and/or himself.

14 So where he actually had hired financial  
15 advisors to take care of his money and his assets  
16 and pay his bills, that correspondence was made  
17 available to us, or some of that. So we actually  
18 looked at those to try and get a better  
19 understanding of his financial condition during that  
20 period of time.

21 Q. And in a forensic investigation such as  
22 this, do you typically have all the documents you  
23 want?

24 A. No. You might have more than we had, but  
25 you don't typically get all the documents you want.

26 Q. Based upon what you were able to look at and  
27 consider in this case, were you able to form some

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28 opinions with regards to Mr. Jackson's financial 8568

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1 condition leading up to February of 2003?

2 A. Yes, we were.

3 Q. Okay. I'd like you to take us through your  
4 opinions in this case that were based upon these  
5 documents.

6 MR. MESEREAU: Objection; foundation.

7 THE COURT: Overruled.

8 You may proceed.

9 MR. AUCHINCLOSS: All right.

10 Q. If you would, please tell us about the  
11 opinions you formed based upon your review of all  
12 the financial documents you've described that were  
13 in these boxes that you reviewed.

14 A. Based on the information we saw, Mr.  
15 Jackson's financial condition had been deteriorating  
16 up and leading into February 2003, evidenced  
17 principally by a significant amount of  
18 overexpenditure over what was being made. In other  
19 words, expenditures exceeded income.

20 Secondly, that the liabilities, the  
21 obligations side of things, the obligations and  
22 liabilities were increasing steadily and fairly  
23 significantly.

24 And lastly, there appears to be an ongoing  
25 cash crisis. You'll see a number of the memos that  
26 we looked at that talked about cash crisis. Not  
27 enough cash to pay bills, et cetera.

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28 And then lastly, I believe that information, 8569

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1 based on the documents that I've seen, was certainly  
2 known as of February of 2003.

3 Q. All right. Have you prepared a diagram of  
4 this particular slide, Mr. O'Bryan, that you brought  
5 with you?

6 A. I think there was a blow-up of that made,  
7 yes.

8 MR. AUCHINCLOSS: If I may approach, Your  
9 Honor. And I've shown this to counsel. And I'd  
10 like to just place it on the easel so Mr. O'Bryan  
11 can refer to it during his testimony.

12 MR. MESEREAU: Your Honor, we're going to  
13 object just to the comment on their seeking  
14 documents and their not finding them, to the extent  
15 it suggests that the defense didn't produce  
16 something, and move to strike.

17 THE COURT: I'll strike that comment.

18 MR. AUCHINCLOSS: All right.

19 THE COURT: Go ahead.

20 Q. BY MR. AUCHINCLOSS: Okay. I'd like you  
21 to --

22 THE COURT: Have you seen the chart that  
23 he --

24 MR. MESEREAU: Yes, I did. I did receive a  
25 copy, Your Honor.

26 Q. BY MR. AUCHINCLOSS: Okay. So let's talk  
27 about the first opinion that you've expressed about

28 Mr. Jackson's financial condition deteriorating. 8570

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1 If you could, tell us why you -- how you  
2 arrived at that particular conclusion.

3 A. Well, as I mentioned, it was principally the  
4 documents that we reviewed, and principally in this  
5 matter some of the correspondence received from Mr.  
6 Jackson's financial advisors to either him or his  
7 other advisors about his cash position.

8 Q. Okay. And referring to Slide No. 5, if  
9 you'd take us through that.

10 A. Yes. Through some of these correspondence,  
11 it's apparent that there was --

12 THE COURT: Just a moment. The jurors can't  
13 see.

14 JUROR NO. 8: Can't see.

15 MR. AUCHINCLOSS: Oh, I'm sorry. I'm sorry.

16 My apologies.

17 If I may place this down in the well or --

18 let me just try and adjust it here.

19 No, that's not going to work.

20 Is that all right? Okay.

21 Q. All right. If you'd please --

22 A. We came to that conclusion based on  
23 reviewing a number of different documents. It  
24 seemed to point to the following three things fairly  
25 consistently: One, that there was approximately 20  
26 to 30 million dollars per year overspending. In  
27 other words, spending over what was being made.

28 That has a tendency -- going back to that balance 8571

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1 sheet, if you're not increasing your assets, and  
2 you're not -- you don't have the income to support  
3 that kind of expenditure, your debt goes up. And  
4 when your debt goes up and your assets don't go up,  
5 back to the balance sheet, your net worth goes down.  
6 So that is a tendency to look at that talks  
7 about deteriorating financial condition, first and  
8 most importantly, an overspending of that nature and  
9 that number. And, two, then, a decreasing net  
10 worth. And that was caused by the third bullet  
11 point, which is the fact that the debt increased  
12 almost \$70,000,000 between 1999 and 2003.

13 Q. All right. So let's talk about the first  
14 thing you mentioned, his overspending habits, then  
15 how you come to your conclusions based on that.

16 First of all, you mention these primary  
17 assets, two main -- two music publishing catalogs?

18 A. Well, I believe that, based on my review of  
19 the balance sheet, there are really three main  
20 assets, certainly one of them being the MIJAC  
21 catalog, which is publishing rights to certain of  
22 Mr. Jackson's personal performances and songs.  
23 And second is a Sony/ATV catalog, which is a  
24 library of copyrighted songs and performances by  
25 both Sony and Mr. Jackson -- Jackson other than the  
26 MIJAC catalog. Those would be two main assets. And  
27 those are income-producing, because they produce

28 royalties and create income to Mr. Jackson. 8572

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1 The third main asset would also be  
2 Neverland, Neverland Ranch, which is a fairly  
3 substantial and significant asset.

4 Q. So what documents did you rely upon to come  
5 to the conclusion that he was overspending?

6 A. That was correspondence from his financial  
7 advisors.

8 Q. Okay. I'd like to start by going back to  
9 1999 and then take us up to 2003 and '4.

10 In 1999, did you consider any correspondence  
11 from Mr. Jackson's financial advisors in your  
12 forensic investigation?

13 A. We did, yes.

14 Q. Did you recall a letter dated October 13th,  
15 1999, from Holthouse?

16 A. Yes, it was Holthouse Kaitlyn & Von Tropp  
17 (sic), or something like that.

18 Q. Okay. Who is -- can you determine from the  
19 correspondence who is Holthouse Kaitlyn & Von Tropp  
20 (sic)?

21 A. That is a CPA firm in Los Angeles that  
22 appeared to be acting as Mr. Jackson's financial  
23 advisors, business managers. They literally paid  
24 the bills, they kept track of the assets. And they  
25 reported back to Mr. Jackson or his advisors as it  
26 relates to financial condition and status of bills,  
27 et cetera.

28 Q. So they were actually cutting the checks to 8573

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1 the vendors and people that Mr. Jackson owes money  
2 to?

3 A. Apparently so, yes.

4 Q. Okay. Back to this '99 memo. Does it make  
5 any reference to unpaid bills?

6 A. It does, yes.

7 Q. All right. Let's look at the next slide.

8 MR. MESEREAU: Objection. Relevance; Court  
9 ruling.

10 THE COURT: Overruled.

11 Q. BY MR. AUCHINCLOSS: Specifically, what does  
12 it tell you about Mr. Jackson's unpaid bills?

13 A. It says that Holthouse was short  
14 approximately \$780,000 to meet "our outstanding  
15 liabilities," meaning at that point in time there  
16 was -- they were short in cash \$780,000 to pay  
17 outstanding invoices or obligations due by Mr.  
18 Jackson and/or his entities.

19 Q. In this letter does Holthouse offer any  
20 suggestions or concerns?

21 A. They do, yes.

22 Q. What do they say?

23 A. They go on to say --

24 MR. MESEREAU: Objection; hearsay.

25 MR. AUCHINCLOSS: It's relied upon for his  
26 opinion.

27 THE COURT: I'll sustain the objection to the

28 hearsay. He's allowed to form his opinion on that 8574

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1 type of material, but he isn't necessarily allowed  
2 to repeat it, the material he forms his opinion on.

3 MR. AUCHINCLOSS: Okay.

4 Q. All right. So they expressed concerns about  
5 Mr. Jackson's overspending?

6 A. That's correct.

7 MR. AUCHINCLOSS: Your Honor, am I permitted  
8 to continue the PowerPoint presentation?

9 THE COURT: Well, you can't show that

10 material. You're quoting hearsay quotes from other  
11 people that have to have limiting instructions, and

12 that's exactly what I asked you at the beginning,

13 what the material was about. I wouldn't allow a

14 witness to go to the blackboard and write down what

15 someone else told him. You've got that in the

16 PowerPoint presentation?

17 MR. AUCHINCLOSS: This is the specific

18 statement that he relied upon to form his opinion,

19 from the defendant's --

20 THE COURT: I understand that. He's given

21 his opinion.

22 MR. AUCHINCLOSS: Okay.

23 Q. So looking at the records, going through the

24 records, did Mr. Jackson appear to heed the concerns

25 of the Holthouse accountants, of his Holthouse

26 accountants?

27 A. No. The expenditure levels seemed to

28 continue throughout 1999, as evidenced by comments 8575

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1 made within the Holthouse memos.

2 Q. Okay.

3 MR. MESEREAU: Same objection. Excuse me.

4 I'm going to object to relevance; 1999.

5 MR. AUCHINCLOSS: I'll be happy to make an

6 offer of proof as to why we're starting here.

7 THE COURT: The objection is overruled.

8 Q. BY MR. AUCHINCLOSS: Is there an indication,

9 during this period, from Holthouse as to how much

10 Mr. Jackson is receiving in income versus how much

11 his expenditures are?

12 A. Yes. In one of the memos, it stated that

13 Mr. Jackson was receiving --

14 MR. MESEREAU: Objection; hearsay.

15 THE COURT: The problem we're having here --

16 I'm going to talk to the jury a second about this.

17 (To the jury) The expert is allowed to use

18 this type of material to form an opinion on. But

19 you, as a jury, are not allowed to accept that

20 material for the truth of the matter asserted. It

21 is hearsay, and it is only being presented to show

22 you what he relied on.

23 So with that limiting instruction, I will

24 allow him to state -- to answer your question.

25 MR. AUCHINCLOSS: Okay. Would you like the

26 question repeated?

27 THE WITNESS: No, I have the question in

28 mind. 8576

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1 MR. AUCHINCLOSS: Okay.

2 THE WITNESS: In fact, in 1999, there was a  
3 memo, it was actually in 2000, which summarized the  
4 1999 income statement, and basically said that there  
5 was approximately 11 --

6 MR. MESEREAU: Objection; hearsay.

7 THE COURT: Overruled.

8 Go ahead. With the same limitation.

9 THE WITNESS: Stated that there was

10 approximately \$11.5 million received on the MIJAC  
11 catalog and the Sony/ATV catalog; five million on  
12 the MIJAC, 6.5 million on the Sony catalog, for a  
13 total revenue of about \$11.5 million, if my math's  
14 correct.

15 At the same point in time, there was  
16 expenditures of over \$20 million, made up of  
17 approximately \$5 million in legal and professional  
18 fees, \$5 million in security and ranch expenditures,  
19 seven and a half million dollars in personal  
20 expenditures, and \$2.5 million of other  
21 miscellaneous, which was principally insurance. So  
22 total income of 11.5 million and expenditures of  
23 over \$20 million.

24 Q. BY MR. AUCHINCLOSS: All right. Now, you've  
25 mentioned previously this MIJAC catalog and the  
26 Sony/ATV catalog. Does it appear, based on these  
27 records that you have reviewed, that these are his

28 two main assets? You mentioned Neverland, but are 8577

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1 these the main assets over and above Neverland?

2 A. Well, those are the main income-producing  
3 assets. I mean, as I said, I think there's three  
4 main assets, the two catalogs and Neverland. But  
5 the MIJAC catalog and the Sony/ATV catalog are the  
6 two income-producing assets which generate royalties  
7 off of those copyrighted performances.

8 Q. What is a music publishing catalog?

9 A. It's really a library of copyrighted songs  
10 or performances which a manager or an administrator  
11 sells into the commercial market. Either they sell  
12 it by playing it on the radio, they sell it by  
13 allowing a movie to use the song, a T.V. show to use  
14 the song, advertisements to use the song, or they  
15 might sell sheet music.

16 Each and every time that song is played or  
17 those -- that sheet music is used, you get a royalty  
18 off of it. So that generates money, which is  
19 captured by a royalty capture device, and then that  
20 is sent to MIJAC catalogs for all of the MIJAC  
21 songs, which again principally were Mr. Jackson's  
22 personal compendium of performances, or for the  
23 Sony/ATV, which was that catalog. That generates  
24 revenue.

25 Q. Okay. Now, the MIJAC catalog consists of  
26 what?

27 A. As I mentioned, that was principally Mr.



1 and performances. That's what the MIJAC catalog is.

2 Q. And the Sony/ATV catalog?

3 A. The Sony/ATV was a joint venture or a  
4 partnership between Sony, who contributed a number  
5 of their copyrighted songs. I think it started out  
6 principally as country-western, and Mr. Jackson  
7 contributed his copyrighted performances of songs,  
8 other than MIJAC, which at the time there were a  
9 number of different performances, but some of them  
10 were The Beatles' hits.

11 Q. And is Mr. Jackson's interest in the Sony  
12 catalog a part interest?

13 A. Yes, it is.

14 MR. MESEREAU: Objection; foundation.

15 THE COURT: Sustained.

16 Q. BY MR. AUCHINCLOSS: Is Mr. Jackson the sole  
17 owner of the Sony catalog?

18 MR. MESEREAU: Objection; foundation.

19 THE COURT: Sustained.

20 Q. BY MR. AUCHINCLOSS: Do the records that  
21 you've reviewed indicate whether or not Mr. Jackson  
22 is the sole owner of the Sony catalog?

23 MR. MESEREAU: Objection; foundation.

24 THE COURT: Overruled.

25 You may answer that question.

26 THE WITNESS: Yes, the records indicate that

27 Mr. Jackson is a part owner of that catalog with

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28 Sony as the other partner. 8579

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1 Q. BY MR. AUCHINCLOSS: Okay. Now, you've  
2 given us a breakdown of the 20 million in expenses.

3 MR. MESEREAU: Objection; misstates the  
4 evidence.

5 THE COURT: Sustained.

6 Q. BY MR. AUCHINCLOSS: Did you give us a  
7 breakdown of the 20 million in expenses that --  
8 for the '99 period in that March Holthouse letter?

9 A. I did, yes.

10 Q. Okay. Was there -- were there any  
11 additional liabilities over and above the \$20  
12 million, that Mr. Jackson accrued during the  
13 previous year based on that letter?

14 A. Yes, there were.

15 Q. What are we talking about?

16 A. It's about \$11 million of interest expense  
17 on the two loans. There's two loans with B of A  
18 that are secured by -- one by the MIJAC catalog.  
19 The royalties in the MIJAC catalog are used as  
20 collateral against -- first it's a \$15 million loan,  
21 and then a \$20 million loan, and it continues to go  
22 up.

23 And then there's the -- the Sony/ATV catalog  
24 is used as collateral for approximately \$140 million  
25 of loans from B of A. And those two loans in 1999  
26 incurred about \$11 million of expenditures -- excuse  
27 me, \$11 million of interest that would be added to

28 the 20 million to come up to a total expenditure. 8580

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1 Q. Okay. So let me see if -- paraphrase and  
2 see if I have this right.

3 In 1999, before this letter was written,  
4 Mr. Jackson had \$31 million in liabilities; is that  
5 correct, approximately?

6 A. \$31 million of expenditures.

7 Q. I'm sorry, \$31 million in expenditures?

8 A. That's correct.

9 Q. And he had \$11.5 million in income?

10 A. That's the income coming off of the two  
11 catalogs, yes.

12 Q. So he's spending millions more than he's  
13 making?

14 A. The evidence shows that he's spending about  
15 \$20 to \$30 million more than he's making.

16 Q. Now, is that an annualized issue? Are you  
17 saying -- I mean, he's making 20 or 30 -- or  
18 spending 20 or 30 more than he's making per year?

19 A. That's correct.

20 Q. Is that what we're talking about?

21 A. That's annually, yes.

22 Q. Okay. So, you've mentioned some loans that  
23 he has accrued, some debts. Who was the lender in  
24 those loans?

25 A. Bank of America.

26 Q. Can you tell at this stage what types of  
27 loans those are?

28 A. Well, one is what's called a line of credit, 8581

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1 which means you can borrow from zero to the total  
2 amount of the loan possible. And the other was just  
3 a set loan. Started at \$140 million, and it's grown  
4 to \$200 million.

5 Q. Okay. So we're still looking at the  
6 Holthouse memo of 2000. At that stage, what was  
7 that loan?

8 A. In 2000 --

9 Q. In March.

10 A. In March of 2000, I believe that loan was  
11 \$24 million.

12 Q. Okay. And then was there -- were there any  
13 other loans at that point?

14 A. Well, there was the B of A loan for 140  
15 million. There was the \$24 million B of A loan on  
16 the MIJAC catalog. And there was an additional \$26  
17 million owed to Sony.

18 Q. Okay. And what is the Sony loan related to,  
19 if you could tell us?

20 A. It appeared to be some 1994 transaction  
21 where 26 million dollars was owed.

22 Q. So the previous Holthouse letter you talked  
23 about said that he had I think around \$800,000 in  
24 accounts payable.

25 A. Okay.

26 Q. Is that right?

27 A. Well, it said that there was -- there was

28 not cash available to pay approximately \$800,000 of 8582

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1 outstanding obligations.

2 Q. So those are bills that he has that he

3 didn't have the money to pay?

4 A. Correct.

5 Q. How does his outstanding obligations versus

6 cash -- look at the point where we're at now, at

7 the -- in March of 2000. Does the letter reflect

8 his ability to pay his obligations at that point?

9 A. As I recall, the memo from Holthouse said

10 that at that point in time --

11 MR. MESEREAU: Objection; hearsay.

12 THE COURT: Overruled.

13 You may answer, with the same limitation

14 that I instructed the jury on earlier.

15 Go ahead.

16 THE WITNESS: Approximately \$3.5 million of

17 outstanding obligations as of that date in 2000.

18 Q. BY MR. AUCHINCLOSS: Does Holthouse express

19 any additional concerns about his assets, the

20 vitality of, or the risk that's being presented by

21 this overspending concerning his assets?

22 MR. MESEREAU: Objection. Leading and

23 hearsay.

24 THE COURT: Sustained.

25 Q. BY MR. AUCHINCLOSS: Are there any other

26 concerns that are expressed by Holthouse in this

27 memo?

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28 MR. MESEREAU: Objection. Leading and 8583

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1 hearsay.

2 THE COURT: Sustained. Calls for a

3 narrative.

4 Q. BY MR. AUCHINCLOSS: Okay. Does Holthouse

5 talk about any possible tax liabilities in this

6 letter?

7 MR. MESEREAU: Objection; hearsay.

8 THE COURT: Overruled.

9 You may answer.

10 THE WITNESS: They do, yes. What's talked

11 about is, they mention in the letter that if Mr.

12 Jackson and his entities continue to overspend by

13 \$20 to \$30 million a year, that the collateral for

14 those loans is the catalogs. That's what secures

15 the catalogs. Just like your car secures your car

16 loan, those catalogs secure those loans, or your

17 house secures your mortgage.

18 And their concern is that if that rate of

19 spending continues, that those catalogs could be in

20 jeopardy. In other words, he may have to sell

21 those, even if he could sell them. And if, in fact,

22 you sell those catalogs, there's a substantial tax

23 liability. So you not only have to pay the debt,

24 but you also have to pay the taxes on the sale of

25 those catalogs. And it talks about that issue and

26 that being a concern of Holthouse.

27 Q. BY MR. AUCHINCLOSS: Does Holthouse write an

28 additional letter expressing their concerns in June 8584

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1 of 2000?

2 MR. MESEREAU: Objection. Hearsay; leading;  
3 foundation.

4 THE COURT: Overruled.

5 You may answer.

6 THE WITNESS: They do, yes.

7 Q. BY MR. AUCHINCLOSS: And do they discuss the  
8 issue of how much available cash or remaining debt  
9 on these loans Mr. Jackson has to fund his current  
10 obligations?

11 A. They do, yes.

12 Q. What do they say?

13 A. At that point in time, there was the \$20  
14 million line of credit that was basically --  
15 Holthouse even says in the memo that it's really --  
16 that line of credit and the other debt is funding  
17 his living expenses.

18 And the memo goes on to say that at that  
19 point in time, \$9.2 million has been lent or drawn  
20 on the line of credit. Meaning that there's only  
21 another \$800,000 available on that line to fund  
22 living expenses for an indefinite period of time.

23 Q. Do they describe any spending restrictions  
24 on Mr. Jackson that need to go into effect?

25 A. They do. Concerned over that cash situation  
26 or that cash crisis, they immediately state that  
27 they will no longer pay any bills unless authorized

28 by the client, and -- 8585

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1 MR. MESEREAU: Objection. Hearsay;

2 foundation.

3 THE COURT: Sustained.

4 Q. BY MR. AUCHINCLOSS: All right. Moving on

5 to June 14th, just a few days later, did they send

6 another memorandum? Did Holthouse send another

7 letter to Mr. Jackson?

8 A. They did, yes.

9 Q. Do they talk about Mr. Jackson's rate of

10 spending specifically in that letter?

11 A. Um --

12 MR. MESEREAU: Objection. Hearsay;

13 foundation.

14 THE COURT: Overruled.

15 You may answer.

16 THE WITNESS: Yes, they do.

17 Q. BY MR. AUCHINCLOSS: What do they say?

18 A. They continue to act -- or they continue to

19 say they are concerned about Mr. Jackson's rate of

20 spending. And again, he is spending approximately

21 \$20 to \$30 million more than he's making per year.

22 Q. BY MR. AUCHINCLOSS: Did they specifically

23 say that?

24 A. Yes.

25 Q. What is Mr. Jackson's debt at this

26 particular juncture? Is it mentioned in these

27 documents?

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1 hearsay.

2 THE COURT: It's --

3 MR. AUCHINCLOSS: It's compound.

4 THE COURT: -- compound.

5 MR. AUCHINCLOSS: I'll go ahead and withdraw

6 the question.

7 Q. Does -- do these documents that you've

8 described so far say anything about Mr. Jackson's

9 debt that he is now servicing at this point in time,

10 on June 13th or June 14th of 2000?

11 A. They do, yes.

12 Q. What do they tell you about his debt at that

13 point?

14 MR. MESEREAU: Objection; hearsay.

15 THE COURT: Overruled.

16 You may answer.

17 THE WITNESS: As I recall, they mention that

18 the Bank of America debt is a \$200,000 -- excuse me,

19 \$200 million, which is securing the ATV catalog.

20 And as I recall, the line of credit is up to \$35

21 million at that point in time.

22 Q. BY MR. AUCHINCLOSS: Okay. And do they talk

23 about his ability to pay unpaid vendors or bills in

24 that letter?

25 A. Yes. It goes on to state that Holthouse is

26 unable to pay vendors; that vendors continue --

27 MR. MESEREAU: Objection; hearsay.

28 THE COURT: Overruled. 8587

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1 Go ahead.

2 THE WITNESS: And that vendors are  
3 continuing to threaten alternative action if they  
4 are not paid.

5 Q. BY MR. AUCHINCLOSS: Does Holthouse warn Mr.  
6 Jackson of an impending problem?

7 MR. MESEREAU: Objection. Leading; hearsay.

8 THE COURT: Overruled.

9 THE WITNESS: Yes. It goes on to say, back  
10 when -- it said back three months earlier --

11 MR. MESEREAU: Objection; nonresponsive.

12 THE COURT: Sustained.

13 Q. BY MR. AUCHINCLOSS: Could you just confine  
14 your answer to any warnings that are given in the  
15 June 14th, 2000, Holthouse letter?

16 A. Yes. The warnings are that, again, that the  
17 catalogs are now at risk. And that's the MIJAC  
18 catalog and the Sony/ATV catalog, because again,  
19 they are securing those loans, and those loans  
20 continue to increase.

21 Q. Did you consider a memorandum from So Young  
22 Lee to Myung Ho Lee?

23 A. I did, yes.

24 Q. And who is Myung Ho Lee?

25 A. Apparently he was a financial advisor to Mr.  
26 Jackson.

27 Q. And the date of this letter was -- do you

28 recall it? 8588

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1 A. I think it was October of '00. '01,  
2 possibly.

3 Q. And in this letter, does Miss Lee forecast  
4 future spending for the period -- 16-month period of  
5 September 2000 through December 2001?

6 A. Yes, she does.

7 Q. How much spending is forecast?

8 MR. MESEREAU: Objection. Hearsay;  
9 foundation.

10 THE COURT: Overruled.

11 You may answer.

12 THE WITNESS: A little over \$31 million for  
13 that 16-month period of time.

14 Q. BY MR. AUCHINCLOSS: So what does that equal  
15 on an annualized basis in terms of spending?

16 A. If my math is right, about \$23, \$24 million  
17 per year.

18 Q. All right. So has that been an increase  
19 from the previous documentation that you reviewed  
20 concerning Mr. Jackson's expenditures when he was  
21 warned back in, I think it was, March of 2000?

22 A. Yes. The 1999 expenditures were \$20  
23 million, plus approximately \$11 million of interest.  
24 The projection by Ms. Lee was \$23 million for that  
25 year, and that did not include the \$11 or \$12  
26 million of interest expense. So those expenditures  
27 are continuing to increase.

28 Q. Were you able to determine whether or not 8589

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1 these forecasts were accurate as far as future  
2 spending?

3 A. No, we did not see those documents as to  
4 actual expenditures in 2001.

5 Q. Did you ultimately look at documents from  
6 2004 that showed his level of debt during that  
7 period?

8 A. Yeah, we saw how the debt increased 2001 --  
9 or 2000 through 2004.

10 Q. And was the increase in debt commensurate  
11 with these predictions of excessive spending by So  
12 Young Lee?

13 A. Yes. As I mentioned earlier, the debt  
14 increased approximately \$70 million over a  
15 three-year period of time. And that would tend you  
16 to believe that it was about \$20 to \$30 million per  
17 year increase. The debt was increasing because the  
18 expenditures increased over the income levels.

19 Q. Did you consider a February 13th, 2003,  
20 memorandum from International Business Management?

21 A. I did, yes.

22 Q. And who is International Business  
23 Management?

24 A. They appear to be another financial  
25 consulting firm that was assisting Mr. Jackson  
26 and/or his advisors.

27 Q. Okay. Does this letter mention anything

28 about Mr. Jackson's rate of spending? 8590

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1 A. It does.

2 Q. What does it say?

3 MR. MESEREAU: Objection; hearsay.

4 THE COURT: Overruled.

5 THE WITNESS: It says that they are concerned  
6 about his excess spending habits, his continued  
7 excess spending habits over his income.

8 Q. BY MR. AUCHINCLOSS: Do they cite any  
9 specific figures?

10 A. I think it was \$20 to \$30 million again.

11 Q. Okay. Does that letter talk about how  
12 many -- how much money is building up in the unpaid  
13 vendors category?

14 A. It does, yes.

15 Q. What does it say?

16 MR. MESEREAU: Objection. Relevance; Court  
17 ruling.

18 THE COURT: Sustained.

19 Q. BY MR. AUCHINCLOSS: Does it say how much  
20 cash is left to pay these vendors?

21 MR. MESEREAU: Objection; Court ruling.

22 THE COURT: Sustained.

23 Q. BY MR. AUCHINCLOSS: Does it say anything  
24 about the status of his current loan balances in  
25 February of 2003?

26 MR. MESEREAU: Objection; hearsay.

27 THE COURT: Overruled.

28 You may answer. 8591

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1 THE WITNESS: It does, yes.

2 Q. BY MR. AUCHINCLOSS: What is that?

3 A. At that point in time, it mentions that the  
4 MIJAC loans are approximately \$70 million. And the  
5 B of A loan on the Sony/ATV catalog is approximately  
6 \$200 million.

7 Q. Does it say whether or not he has any -- has  
8 sufficient cash to pay his bills?

9 MR. MESEREAU: Objection.

10 Q. BY MR. AUCHINCLOSS: In that month, February  
11 of 2003.

12 MR. MESEREAU: Leading; hearsay; foundation;  
13 Court ruling.

14 THE COURT: Overruled.

15 You may answer

16 THE WITNESS: Yes. It states that at that  
17 point in time there are \$10.5 million of unpaid  
18 vendor invoices. And there's only \$38,000 of cash  
19 in the bank.

20 Q. BY MR. AUCHINCLOSS: Okay. So if we can  
21 summarize what has happened to his debt since 1999,  
22 what was his debt with the Bank of America as of  
23 2000?

24 A. Well, in 2000, the debt was approximately  
25 \$155 million.

26 Q. And let's go now to February of 2003.

27 A. That debt has grown to \$224 million.

28 Q. 70 \$million in three years increase? 8592

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1 A. That's correct.

2 Q. Have you reviewed loan documents, these loan  
3 documents for the two loans that you're -- or for  
4 the loans on these music catalogs that you've talked  
5 about?

6 A. I did, yes.

7 Q. Do they have any covenants or conditions?

8 A. They do, yes.

9 Q. Any covenants regarding accruing additional  
10 debt?

11 MR. MESEREAU: Objection. Foundation,  
12 hearsay, and leading.

13 THE COURT: Overruled.

14 You may answer.

15 THE WITNESS: Yes, there is a covenant.

16 Covenants -- well, there is a covenant that says  
17 that there's no additional debt allowed unless  
18 approved by Bank of America.

19 Q. BY MR. AUCHINCLOSS: Is there a covenant  
20 against -- any covenant regarding, I should say,  
21 further encumbering these two assets? In other  
22 words, getting more -- mortgaging them further with  
23 another agency?

24 A. Yes. There is also a covenant that says  
25 that Mr. Jackson and/or his businesses are not  
26 allowed to further encumber these two catalogs. In  
27 other words, the only loan that can be on these two

28 catalogs is the two B of A loans. 8593

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1 Q. So --

2 THE COURT: We'll take our break.

3 MR. MESEREAU: Your Honor, we have a motion  
4 to make.

5 THE COURT: Not now.

6 (Recess taken.)

7

8 (The following proceedings were held in  
9 open court outside the presence and hearing of the  
10 jury:)

11

12 THE BAILIFF: You can have a seat, Mr.  
13 O'Bryan.

14 THE COURT: The reason I've come in before we  
15 bring the jury in is that I want to make a ruling  
16 here that helps clarify what you're trying to do,  
17 both of you.

18 Initially I made an order that the District  
19 Attorney was permitted to bring in general financial  
20 information to provide evidence from which the jury  
21 may or may not infer that the defendant was -- had  
22 financial problems, from which they may or may not  
23 infer that that gives him some motive to commit the  
24 crimes the D.A. alleges he's committed.  
25 The offer of proof that was made in the  
26 memorandum that you submitted, your trial  
27 memorandum, was within what I perceived.

28 The thing that I'm uncomfortable with, and 8594

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1 have been for a few minutes, is the constant having  
2 your expert refer to, you know, letter after letter  
3 from his advisors about his financial condition.  
4 The expert has testified that he relied on the  
5 balance sheet and income expenditure statements,  
6 which is basically what you expect an expert to rely  
7 on. And to some extent certainly he would rely on  
8 other people's opinions, financial advisors of Mr.  
9 Jackson. But it's not the kind of evidence that I'm  
10 going to allow you to continue to bring up.

11 So you can -- my ruling is that his quotes  
12 from -- that he wants to make or you want him to put  
13 into evidence from Michael Jackson's advisors are to  
14 stop at this point.

15 I have advised them that those have limited  
16 value to them, since they can't accept those for the  
17 truth of the matter asserted, but I think if we  
18 continue in that vein, it's not the right way to  
19 present the evidence.

20 MR. AUCHINCLOSS: May I just tell the Court  
21 how I intend to finish up, just so we're --

22 THE COURT: They can't hear you.

23 MR. AUCHINCLOSS: May I just tell the Court  
24 how I intend to finish up?

25 THE COURT: You may.

26 MR. AUCHINCLOSS: Basically, just so you  
27 know, Your Honor, we wanted to do this with balance

28 sheets. And as you know, we weren't -- 8595

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1 THE COURT: I don't want to hear that. What  
2 do you want to tell me?

3 MR. AUCHINCLOSS: At the end of the -- we're  
4 at the end of his testimony. And we're going to  
5 finish with the two summaries that were provided by  
6 the Bank of America. Now, these are actual letters  
7 that were SDT'd from Bank of America to  
8 representatives. And just so you know, the  
9 testimony is book-ended by the statement, balance  
10 statement, and these letters.

11 THE COURT: Let me see the letters.

12 MR. AUCHINCLOSS: Okay. Well, I have a  
13 copy, but --

14 THE COURT: Have you seen the letters,  
15 Counsel?

16 MR. MESEREAU: I'm not sure what he's  
17 talking about.

18 MR. AUCHINCLOSS: This would be the Jane  
19 Heller letter and the Maiorella letter from the Bank  
20 of America indicating the status of the loan  
21 balances as of 2004.

22 THE WITNESS: I have them here, if you want.

23 MR. MESEREAU: May I take a look, Your  
24 Honor?

25 THE COURT: Well, after me.

26 MR. MESEREAU: Okay. Excuse me.

27 MR. AUCHINCLOSS: Jane Heller and Maiorella.

28 THE COURT: So these are the status of the 8596

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1 loans in 2004?

2 MR. AUCHINCLOSS: Yes. And these provide  
3 conclusive evidence that everything that was  
4 predicted, everything that was stated by all of the  
5 letters that we have indicated, was borne out in the  
6 resulting accumulation of debt and of what the --

7 THE COURT: Yeah, but the issue isn't what  
8 his financial status is today or whether you were  
9 right or wrong.

10 MR. AUCHINCLOSS: I know, the issue is --

11 THE COURT: The issue is what was his frame  
12 of mind in 2000 -- late 2002 and 2003.

13 MR. AUCHINCLOSS: And that's what --

14 THE COURT: And not whether he was even  
15 right. He could have been absolutely wrong. So --

16 MR. AUCHINCLOSS: That's true.

17 THE COURT: So his financial statement today  
18 isn't at issue.

19 MR. AUCHINCLOSS: Well, I'm just saying  
20 that's why the letters are so important, because  
21 they impute knowledge of the defendant.

22 THE COURT: Today.

23 MR. AUCHINCLOSS: No, the ones that we've  
24 introduced so far. And this basically confirms that  
25 the letters were all correct, and that they also  
26 further show what was going on in 2003.

27 THE COURT: What they show is, in hindsight,

28 he was in trouble. But that's not the issue. 8597

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1 MR. AUCHINCLOSS: All right. So --

2 THE COURT: Did you look at the letters, Mr.

3 Mesereau?

4 MR. MESEREAU: I've looked at them, Your

5 Honor. And I would object based on what the Court

6 just said. The point of their presentation is not

7 to talk about --

8 THE COURT: They can't hear you.

9 MR. MESEREAU: I'm sorry, Your Honor.

10 The point they're trying to prove is not

11 what is his financial status today. They're

12 allegedly trying to suggest there was a motive in

13 2003 to conspire to do criminal acts because of

14 financial concerns, which of course we vigorously

15 dispute.

16 But nevertheless, the issue is what is

17 relevant to a possible motive in 2003, specifically

18 between January and March. Nothing after that date

19 would have any relevance to what they claim they're

20 trying to prove.

21 MR. AUCHINCLOSS: Our point is that these

22 letters tell what happened in 2003, tell what was

23 going on at that time. Our --

24 THE COURT: I must have misread them. Do you

25 want to give them back to me? I thought they were

26 talking about right now.

27 MR. AUCHINCLOSS: Well, they're talking

28 about how the debt has accumulated. 8598

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1 THE COURT: They're talking about right now,  
2 aren't they?

3 MR. AUCHINCLOSS: Yes, they are.

4 THE COURT: All right. Give them back to  
5 him.

6 MR. AUCHINCLOSS: But it's the genesis of  
7 those problems that exist in 2003.

8 THE COURT: Do you understand what I'm  
9 saying, Counsel?

10 MR. AUCHINCLOSS: I do. I do.

11 THE COURT: Do you understand the limitations  
12 that I gave you on the financial material?

13 MR. AUCHINCLOSS: That it was to be concise --

14 THE COURT: I think now the limitation is  
15 this: That I don't want you asking him any more  
16 quotes from any of his advisors. You are apparently  
17 not going to do that.

18 MR. AUCHINCLOSS: All right.

19 THE COURT: And I don't think it's -- and I  
20 will rule that an opinion as to his present  
21 financial status would be improper.

22 MR. AUCHINCLOSS: Very good. I'll just  
23 finish up with his opinions about the defendant's  
24 financial status in 2003.

25 THE COURT: At that time. All right.

26 MR. AUCHINCLOSS: All right. Thank you.

27 THE COURT: Thank you.

28 You can bring in the jury. 8599

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1 (The following proceedings were held in  
2 open court in the presence and hearing of the  
3 jury:)

4

5 THE COURT: Counsel?

6 MR. AUCHINCLOSS: Thank you, Your Honor.

7 Q. Mr. O'Bryan, where we left off, I was  
8 drawing your attention back to the summary of your  
9 opinions, and I'm going to ask you at this time,  
10 based upon your review of all the records in this  
11 case, including the records you've testified about,  
12 can you walk us through your opinions about Mr.

13 Jackson's financial condition as of the  
14 February-March period of 2003? What are your  
15 opinions, sir?

16 A. Again, they are that Mr. Jackson's financial  
17 condition has deteriorated, up and leading to that  
18 point of time, February of 2003. The expenditures  
19 have exceeded income. The liabilities have  
20 increased. And there is a liquidity crisis or a  
21 cash crisis which looms and has been ongoing. And I  
22 believe those conditions were known as of February  
23 2003.

24 MR. AUCHINCLOSS: All right. Thank you very  
25 much, Mr. O'Bryan.

26 THE COURT: Cross-examine?

27 MR. MESEREAU: Yes, please, Your Honor.

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1 CROSS-EXAMINATION

2 BY MR. MESEREAU:

3 Q. Good afternoon.

4 A. That it is. Good afternoon.

5 Q. My name is Thomas Mesereau and I speak for

6 Mr. Jackson.

7 When you began your examination by the

8 prosecutor for the government, you indicated there

9 was some documents that you had wanted to see if you

10 could, but they were not available to you, right?

11 A. That is correct.

12 Q. And what documents were they?

13 A. Those would be -- well, we'd like to see

14 financial statements for 2000 -- for 1999, 2000,

15 2001, 2002, and all the way through February of

16 2003. In addition to that, general ledgers, which

17 are the summation of transactions, which become

18 financial statements. We asked for bank statements.

19 Those types of detailed supporting documentation

20 would be things that we would typically ask for, and

21 we did. They were just simply not made available to

22 us.

23 Q. Okay. They were not made available to you

24 by the prosecutor who hired you, correct?

25 MR. AUCHINCLOSS: Objection; misstates the

26 evidence.

27 THE COURT: Overruled.

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28 You may answer. 8601

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1 THE WITNESS: I was simply told that that  
2 information was not available to me.

3 Q. BY MR. MESEREAU: Well, you've never spoken  
4 to anyone on the defense side, correct?

5 A. I have not, no.

6 Q. The only people you spoke to about your  
7 opinions today are the prosecutors for the  
8 government, correct?

9 A. That's correct.

10 Q. And when did you first talk to any  
11 prosecutor for the government?

12 A. Oh, I think the first call came to me  
13 probably back in October-November.

14 Q. Okay. And who called you?

15 A. Oh, it was Mr. Auchincloss.

16 Q. Okay. And have you worked with Prosecutor  
17 Auchincloss ever since?

18 A. I have not, no.

19 Q. Okay. Who have you worked with to -- in the  
20 process of preparing to testify in this trial?

21 A. We've met with Mr. Auchincloss, and also a  
22 Ms. Linz, as I recall her name, Chris Linz. I met  
23 Mr. Sneddon, but we really didn't talk about my  
24 testimony, per se.

25 Q. Okay. Now, you've indicated you wished you  
26 could have looked at financial statements for 1999,  
27 2000, 2001 and 2002; is that correct?

28 A. All the way up through February of 2003, 8602

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1 actually.

2 Q. Okay. So in the process of forming your  
3 opinions, and I'm speaking about the opinions you've  
4 testified to today, you haven't looked at one  
5 certified financial statement of Mr. Jackson, true?

6 A. Well, we saw the June 30 -- there's a 1999  
7 financial statement, and there's a June 30, 2002,  
8 financial statement.

9 Q. Okay. And who prepared those?

10 A. Prepared by Holthouse, as I recall.

11 Q. Okay. And are they certified, to your  
12 knowledge?

13 A. Yes, they are.

14 Q. Okay. And did you talk to anyone at  
15 Holthouse about what they used to prepare those  
16 statements?

17 A. No. You can see what they used to prepare  
18 the statements.

19 Q. Well, let me just -- you can see what they  
20 used to prepare those statements?

21 A. Yes.

22 Q. You can see every document they reviewed?

23 A. No, but you know, based on the opinion that  
24 they gave and the types of financial statements that  
25 they are.

26 Q. Okay. Okay. You didn't look at general  
27 ledgers, because they were not available, correct?

28 A. That's correct. 8603

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1 Q. And please tell the jury what general  
2 ledgers would have -- well, first of all, before I  
3 get into that. The financial statements you did not  
4 look at, why would you like to have looked at those  
5 financial statements?

6 A. Because, as I mentioned in my direct, in  
7 doing a forensic accounting investigation, you want  
8 to see as much information as you possibly can. So  
9 that may lend additional information, it may not,  
10 but you certainly want to see as much as you  
11 possible can.

12 Q. And you said you would like to have looked  
13 at general ledgers, but could not, right?

14 A. That's correct.

15 Q. And why would you have preferred to have  
16 looked at general ledgers?

17 A. It's just more information. Understand that  
18 the general ledgers are nothing more than a process  
19 of accumulating a bunch of different transactions  
20 that then come to an end number that then become  
21 part of the balance sheet. So it just tells you the  
22 detail that makes up the final number. It's just  
23 more information.

24 Q. You didn't look at bank statements, correct?

25 A. We did not see any bank statements, no.

26 Q. And had you had any bank statements  
27 available, what benefit would you have had?

28 A. Well, it would tell you cash balances. It 8604

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1 would tell you the expenditures, at least on a cash  
2 basis. You wouldn't know the detail. It would just  
3 be like looking at your normal bank statement, just  
4 shows the check and the account. So it would show  
5 you cash balances on an ongoing basis.

6 Q. And are you saying the documents you looked  
7 at did not identify for you exactly what the nature  
8 of the expenditures were?

9 A. No, there are documents within some of the  
10 Holthouse memos and some of the financial  
11 consultants that talk about individual expenditures  
12 and individual expenditure levels.

13 Q. Okay. You didn't look at any tax returns,  
14 correct?

15 A. No, we actually did, I think, see tax  
16 returns.

17 Q. Which ones; do you know?

18 A. I don't recall the years. Seems to me they  
19 were later years.

20 Q. Okay. You didn't see any during the period  
21 you're giving an opinion on, did you?

22 A. I think we may have seen '02, maybe '03.

23 Q. Okay. And are you sure about that?

24 A. I don't recall. There's not a lot of  
25 information that's pertinent to this analysis in a  
26 tax return.

27 Q. Okay. Were they corporate returns or

28 personal; do you know? 8605

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1 A. I believe they were personal.

2 Q. Okay. Now, you've indicated that you are

3 with a financial consulting firm, correct?

4 A. That is correct.

5 Q. And would one of the areas of expertise in

6 your firm be looking at someone's bare financial

7 condition and giving them advice how to change their

8 condition and improve it?

9 A. I'm not sure what you mean by "bare."

10 Q. Well, you've given the jury your opinions

11 about Mr. Jackson's expenditures, liabilities and

12 liquidity, correct?

13 A. That's correct.

14 Q. You were not here to tell the jury what all

15 of his assets were worth during that particular time

16 period, correct?

17 A. And we don't know exactly what they were

18 worth during that particular time frame.

19 Q. Have you looked at any information in

20 response to the prosecutor's questions that would

21 have given you any indication what any of Mr.

22 Jackson's assets were worth?

23 A. There were a number of different documents

24 in those which we saw that talked about value over

25 periods of time. For example, I think there was a

26 value given for Neverland Ranch at some point in

27 time. There was also an appraisal done on the MIJAC

28 catalog at some point in time. And there was an 8606

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1 appraisal done on the entire Sony/ATV catalog at  
2 some point in time. Those would be the major  
3 assets. And we did see valuation -- two valuations  
4 done by an appraiser, and then one I think was just  
5 a representation maybe made by IBM, as I recall.

6 Q. Now, the prosecutor talked to you about a  
7 letter from a company called International Business  
8 Management. Do you remember that?

9 A. I do, yes.

10 Q. That was in February of 2003, correct?

11 A. That's correct.

12 Q. And do you recall that in that letter from  
13 that firm the Sony/ATV catalog was estimated to be  
14 worth approximately one billion dollars?

15 A. I do, yes. That's the catalog in total,  
16 yes.

17 Q. And clearly if you were going to try and  
18 advise someone like Mr. Jackson, based on the  
19 information you've given the jury today, about how  
20 to restructure his affairs to not have the debt he  
21 had or to be more liquid, you would consider the  
22 possibility of selling assets, true?

23 A. I think that's a real possibility here, yes.

24 Q. And if, in fact, the value of one billion  
25 dollars that is found in the letter you refer to is  
26 true, clearly if you were advising Mr. Jackson how  
27 to solve any cash crisis, you would consider the

28 possibility of liquidating that asset, true? 8607

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1 A. No, because the value of the catalog is one  
2 billion dollars. Mr. Jackson's interest is not half  
3 of that billion dollars.

4 Q. Well, sir, he has an interest in that  
5 catalog, correct?

6 A. Yes. But it is not worth half of one  
7 billion dollars.

8 Q. He purchased the catalog in approximately  
9 1986 for about \$47 million, right?

10 A. I think that's right.

11 Q. He sold half of that interest in the catalog  
12 in approximately 1995 for 90 million, true?

13 A. I believe that's correct.

14 Q. And in 1999 -- excuse me, in 2003, you see  
15 an estimated value in this particular letter of one  
16 billion dollars, right?

17 A. That's correct.

18 Q. And that catalog contains ownership  
19 interests in all of The Beatles' music, true?

20 A. I don't know that it's all of The Beatles'  
21 music. I think it's some of The Beatles' music.

22 Q. Do you know whether or not it's all of it or  
23 not?

24 A. I don't know.

25 Q. Do you know any other recording artists  
26 whose copyrighted music is contained within that  
27 catalog?

28 A. Yeah, I saw a memo on that. I don't recall 8608

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1 the specifics, but I saw there were others involved.

2 I think there were -- Sony's copyrighted music was

3 in there, which I think it initially was

4 country-western. But I think there were other

5 artists in there as well as The Beatles.

6 Q. Okay. Now, that catalog today has been

7 estimated to be worth a couple of billion dollars by

8 some, and even four to five by others. Are you

9 aware of that?

10 MR. AUCHINCLOSS: Objection; assumes facts.

11 THE WITNESS: I'm not aware of that, but

12 again --

13 THE COURT: That's overruled. The answer is

14 he's not aware of it. Next question.

15 Q. BY MR. MESEREAU: Your job was not to

16 appraise the value of the Sony/ATV catalog, correct?

17 A. No. We certainly considered the value in

18 coming to our opinions.

19 Q. Did you hire an appraiser to give you an

20 appraisal of the value of that catalog in the year

21 2003?

22 A. No.

23 Q. You never hired any appraiser to put a value

24 on that catalog at any time while you were working

25 for the government, correct?

26 A. No. I don't see the need to.

27 MR. AUCHINCLOSS: I'm going to object as

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28 relevancy as to the entire catalog. What's relevant 8609

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1 is only the defendant's portion of it.

2 BAILIFF CORTEZ: Your microphone, sir, is  
3 off.

4 THE COURT: The objection is overruled. The  
5 answer is in. Next question.

6 Q. BY MR. MESEREAU: Did you look at the  
7 transactional documents that were drafted in the  
8 mid-'90s, approximately 1995, whereby Mr. Jackson  
9 sold a half interest in that catalog to Sony?

10 A. I see the Sony/ATV agreement. Is that the  
11 document you're referring to?

12 Q. That and other documents that refer to that  
13 transaction.

14 A. I see -- the Sony/ATV agreement is what I  
15 saw.

16 Q. Okay. Your job was not to obtain all of the  
17 documentation that pertained to Mr. Jackson's sale  
18 of a half of his catalog to Sony, right?

19 A. Well, again, I would ask for any document  
20 that's available. And I got the documents I got,  
21 which was the Sony/ATV catalog document.

22 Q. Okay. And you're not aware of efforts,  
23 through the last four or five years, by anybody to  
24 try and purchase his interest, correct?

25 A. In the Sony/ATV?

26 Q. Yes.

27 A. Well, Mr. Jackson, I don't believe, is

28 allowed to sell any interest until 2005. 8610

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1 Q. But there are efforts to purchase it. If  
2 you can get all parties to agree, you can sell your  
3 interest, can't you?

4 A. That's true. If he gets Sony's approval, he  
5 could sell his interest, based on the agreement.

6 Q. So are you aware of any efforts during the  
7 last four or five years by third parties to try and  
8 get Sony and Mr. Jackson together and purchase that  
9 catalog?

10 MR. AUCHINCLOSS: I'll object as to  
11 relevancy beyond 2003.

12 THE COURT: Sustained.

13 MR. AUCHINCLOSS: March.

14 Q. BY MR. MESEREAU: Let me rephrase.

15 Are you aware of any efforts by third  
16 parties, between 1999 and the end of 2003, to get  
17 Sony and Mr. Jackson together and work out an  
18 arrangement where Mr. Jackson's interest is sold?

19 MR. AUCHINCLOSS: Same objection. End of  
20 2003.

21 THE COURT: Sustained.

22 MR. MESEREAU: I'll rephrase it again.

23 Q. Are you aware of any efforts between the  
24 years 1999 and March of 2003 by any third party to  
25 get Mr. Jackson and Sony together so they could  
26 purchase Mr. Jackson's interest in that catalog?

27 A. No, I have not seen any document like that.

28 Q. Okay. Now, among the documents that you 8611

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1 were handed by Prosecutor Auchincloss, was the only  
2 reference to a value of the Sony/ATV catalog the one  
3 billion dollars you just referred to?

4 A. No, there was two. The IBM memo said, I  
5 think, one billion dollars, and it's June -- excuse  
6 me, a February 13th, '03 memo. But again, that's  
7 the value of the catalog, not Mr. Jackson's  
8 interest.

9 And there was a second document that was  
10 actually an appraisal done by an appraisal firm in,  
11 I think it was 1999, for \$991 million, I believe.

12 Q. Okay.

13 A. So there's two documents that I saw.

14 Q. Now, Prosecutor Auchincloss showed you  
15 documents from March of 2003 that were written to  
16 Mr. Jackson by an attorney named David LeGrand,  
17 correct?

18 MR. AUCHINCLOSS: Objection; misstates the  
19 evidence as to the date of the documents.

20 THE WITNESS: You'd have to refer me to that  
21 document. I'm sorry.

22 THE COURT: Just a moment.

23 THE WITNESS: I'm sorry.

24 THE COURT: Well, I guess the District  
25 Attorney is saying that's not the correct date. Do  
26 you have a document that's dated March of 2003?

27 MR. MESEREAU: Yes, I do.

28 Q. Did the prosecutor in the course of your 8612

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1 work for him show you a document dated March 18th,  
2 2003, to Mr. Jackson from a lawyer named David  
3 LeGrand?

4 A. I don't recall seeing that document.

5 Q. Okay. Might it refresh your recollection if  
6 I just show you the one I have?

7 A. Please.

8 MR. MESEREAU: May I approach, Your Honor?

9 THE COURT: Yes.

10 MR. AUCHINCLOSS: May I see what you've got?

11 THE WITNESS: I don't recall seeing this memo  
12 before.

13 Q. BY MR. MESEREAU: So you're saying the  
14 prosecutor didn't give you this document when he was  
15 preparing you?

16 A. No, I'm not suggesting that. It's just I  
17 have not seen that document.

18 Q. Okay. Well, how many documents did you look  
19 at in preparing to testify?

20 A. As I mentioned earlier, there was about six  
21 boxes, something like that, of documents.

22 Q. Okay. Do you recall seeing the name David  
23 LeGrand in the documents?

24 A. I do, yes. There's documents from IBM to  
25 David LeGrand.

26 Q. Do you recall that he was giving Mr. Jackson  
27 advice about how to handle his financial situation?

28 A. I do recall that, yes. 8613

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1 Q. Do you recall him suggesting that if Mr.

2 Jackson --

3 MR. AUCHINCLOSS: I'm going to object to

4 counsel reading --

5 Q. BY MR. MESEREAU: -- sold his --

6 Your Honor, can I --

7 MR. AUCHINCLOSS: -- reading from the

8 letter --

9 MR. MESEREAU: -- complete the question?

10 MR. AUCHINCLOSS: -- that he says he doesn't

11 know about.

12 THE COURT: Sustained.

13 Q. BY MR. MESEREAU: If Mr. Jackson sold his

14 interest in March of 1993 -- excuse me, March of

15 2003 in the Sony/ATV joint venture, okay?

16 A. Yes, I gotcha.

17 Q. That's assuming the parties got together and

18 all agreed Mr. Jackson can sell his interest, all

19 right?

20 A. That's what I believe would have to happen,

21 yes.

22 Q. Yes. He could have paid off the Bank of

23 America loan, he could have ended up worth \$200

24 million after taxes, excluding royalty income, true?

25 A. I've never seen that document, so I can't

26 tell you that's true or not.

27 Q. Okay. But you were given some documents by

28 the prosecutor that Mr. Jackson had gotten from his 8614

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1 lawyer, Mr. LeGrand, true?

2 A. Yes, we were.

3 Q. And you saw some documents that said "Hale  
4 Lane" on them, correct, the law firm the lawyer  
5 belonged to, right?

6 A. We've seen those documents, yes.

7 Q. Okay. And you don't recall a document dated  
8 March 18th where Mr. LeGrand told him how to solve  
9 his liquidity problem and be worth \$200 million  
10 before he got a royalty?

11 MR. AUCHINCLOSS: Objection. Assumes facts;  
12 argumentative.

13 THE COURT: The objection is sustained.

14 Q. BY MR. MESEREAU: Did you ever ask  
15 Prosecutor Auchincloss if he had any documents  
16 available to him where any of Mr. Jackson's advisors  
17 gave him advice on how to solve his liquidity  
18 problem?

19 A. Well, we asked for any and all documents  
20 relevant, so if I didn't know that document exists,  
21 whatever that document is, I wouldn't have known to  
22 ask for it. So we simply asked for any and all  
23 documents relevant to financial condition issues  
24 through February of 2003.

25 Q. Okay. Did you ask for documents through  
26 March of 2003 from Prosecutor Auchincloss?

27 A. We asked for documents all the way through

28 today -- 8615

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1 Q. Okay.

2 A. -- with respect to bank statements and the  
3 like.

4 Q. But you have never seen any document that  
5 suggested Mr. Jackson sell that asset and analyzes  
6 what he'll be worth if he sells his interest, right?

7 A. No. I've never seen that document, no.

8 Q. Okay. Now, none of your calculations  
9 consider any opportunities Mr. Jackson had in the  
10 entertainment industry during those years, correct?

11 A. That's -- well, I mean, it doesn't consider  
12 from an income perspective.

13 Actually, that's not true. It does  
14 consider, because the financial consultants -- the  
15 letters that the financial consultants wrote that I  
16 have looked at and relied on would assumingly take  
17 that into account. They're his business advisors  
18 and they're talking about the excess expenditures.  
19 So my guess is -- not a guess. I would assume they  
20 would include all items of revenue with respect to a  
21 calculation.

22 Q. Mr. O'Bryan, an entertainer like Mr. Jackson  
23 doesn't just go to his CPA every time someone offers  
24 him an opportunity around the world, right?

25 A. I don't know what his relationship with his  
26 business manager was.

27 Q. Well, did you know that he was offered \$100

28 million to do a national tour in 2002? 8616

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1 MR. AUCHINCLOSS: Objection; assumes facts.

2 THE COURT: Sustained.

3 Q. BY MR. MESEREAU: Are you an expert on the  
4 music industry?

5 A. No, I'm not.

6 Q. Have you done any kind of an analysis on  
7 what opportunities in the entertainment industry Mr.  
8 Jackson had between the years 1999 and March of  
9 2003?

10 A. I did not, no. I relied on the financial  
11 consultants' information.

12 Q. Now, based on what you have seen to date,  
13 Mr. Jackson has never gone bankrupt ever, has he?

14 A. Not to my knowledge.

15 Q. Do you have any knowledge of what Mr.  
16 Jackson was offered to do either national or  
17 international music tours between the years 1999 and  
18 March of 2003?

19 A. No.

20 Q. Did the prosecutor give you any documents  
21 about licensing opportunities for various  
22 Michael-Jackson-related products that he was offered  
23 between the years 1999 and March of 2003?

24 A. I don't recall seeing any of those. There  
25 could be some in there, but I don't know that would  
26 be relevant to my calculations.

27 Q. If you were trying to solve a liquidity

28 crisis like you've identified here, wouldn't it be 8617

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1 relevant if you knew that Mr. Jackson could accept  
2 one opportunity and solve it in a day?

3 A. Well, it could be relevant, but it isn't in  
4 this calculation, because that liquidity crisis was  
5 real. There were documents -- there are documents  
6 throughout that we reviewed that there was a serious  
7 cash crisis. And if it could have been solved, why  
8 wasn't it? I mean, there were documents that  
9 there's \$10 million being unpaid. There's documents  
10 where vendors are threatening lawsuits. If it's  
11 that easy to fix, why don't you fix it?

12 Q. If it was as bad as you said it was, why  
13 didn't he go bankrupt?

14 A. Because I think he's been able to continue  
15 to borrow.

16 Q. Do you know that for a fact?

17 A. Yes. The debt's gone up.

18 Q. Do you know what opportunities he had to  
19 market Michael Jackson video games, market Michael  
20 Jackson fragrances, Michael Jackson music, Michael  
21 Jackson concerts, Michael Jackson tours during that  
22 period? Do you know what cash opportunities were  
23 available to him if he wanted them?

24 A. I have no doubt that there were substantial  
25 opportunities. The issue becomes why weren't they  
26 availed themselves? Why didn't they do that? There  
27 was a serious cash crisis. There's no doubt about

28 that, based on the documents I've seen. And in 8618

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1 fact, if it was so easy to do, why wasn't it done?

2 Q. Maybe it wasn't as serious as you've

3 identified.

4 MR. AUCHINCLOSS: Objection; argumentative.

5 THE COURT: Sustained.

6 The jury's admonished to disregard Mr.

7 Mesereau's remark.

8 Q. BY MR. MESEREAU: Did your firm ever do any

9 independent due diligence investigation of Mr.

10 Jackson's finances during that period?

11 A. No. No. Like, for example, searching the

12 Internet or something like that? I mean, we asked

13 for documents.

14 Q. Yes.

15 A. And we got the documents we got. I'm not

16 sure -- independent investigation. Do you mean by

17 going to the Internet or something like that?

18 Q. If your firm had been theoretically retained

19 by Mr. Jackson to do an analysis of his assets and

20 liabilities, to analyze any cash liquidity problem

21 and to make recommendations how to solve it, what

22 would you have wanted to look at?

23 A. We would have wanted to look at the

24 documents we requested, which were all the bank

25 statements, all the general ledgers, all of the

26 income statements and balance sheets and financial

27 statements for the individual years, plus the

28 documents that we've seen, which is the opinions 8619

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1 and/or the correspondence from all of his advisors  
2 as they progressed through serving him and helping  
3 him with his cash crisis.

4 Q. Okay. And I think it goes without saying,  
5 you didn't get all those documents to look at,  
6 correct?

7 A. As I mentioned, we didn't get all the  
8 financial statements and all the documents that we  
9 talked about, no.

10 Q. Now, you asked for documents up to the  
11 present; is that correct?

12 A. As I recall, we did, yes.

13 Q. Did Prosecutor Auchincloss give you  
14 documents that concerned March of 2003?

15 A. We -- we didn't -- apparently we didn't see  
16 some documents. In fact, I'm sure we didn't see all  
17 the documents, but we got what we got and those  
18 documents appeared to go through mostly 2003.

19 Q. Okay. Now, did you see current appraisals  
20 of all assets you believe Mr. Jackson owned when you  
21 did your analysis?

22 A. No. No, the -- as I said, the only two  
23 appraisal documents we saw was an official one in  
24 1999, and then the IBM document, which was again a  
25 valuation of the venture, not just Mr. Jackson's  
26 interest.

27 Q. Now, based on what documents you saw,

28 clearly the Sony/ATV music catalog was an 8620

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1 appreciating asset, right?

2 A. It was an appreciating asset for the  
3 catalog. I'm not sure it was an appreciating asset  
4 for Mr. Jackson's interest because of the way it was  
5 structured.

6 Q. Okay. But, sir, again, if three parties,  
7 Sony, Mr. Jackson and a potential purchaser, get  
8 together, and there is an effort to buy that catalog  
9 from Sony and Mr. Jackson, terms are negotiated, and  
10 almost anything can be liquid at that point, true?

11 A. I'm sorry, "anything can be liquid." Do you  
12 mean --

13 Q. Sony and Mr. Jackson were certainly, based  
14 on what you know, capable of getting together and  
15 jointly selling their interests in that catalog to a  
16 third party, right?

17 A. That's my understanding; that either party  
18 could sell with the approval of the other.

19 Q. Okay.

20 A. Up until December 2005.

21 Q. And you knew that that catalog had  
22 originally been completely owned by Mr. Jackson,  
23 right?

24 A. That's correct. Well, he owned a portion of  
25 it. The catalog became total once Sony put their  
26 interests in as well.

27 Q. Well, when Mr. Jackson initially obtained an

28 interest in the catalog, he had a complete interest, 8621

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1 did he not?

2 A. He had the interest in his copyrighted  
3 assets. Sony had their interest in their  
4 copyrighted assets.

5 Q. I'm talking about in 1986 when he purchased  
6 it.

7 A. He had apparently 100 percent interest.

8 Q. Okay. And you knew he had paid  
9 approximately 47 million for his interest, right?

10 A. I think that's right.

11 Q. He had sold half of that interest  
12 approximately ten years later for 90 million, right?

13 MR. AUCHINCLOSS: Objection; asked and  
14 answered.

15 THE COURT: Sustained.

16 Q. BY MR. MESEREAU: And in 2003, it was your  
17 understanding that the entire catalog was worth --  
18 at least the only estimate you saw was a billion,  
19 right?

20 MR. AUCHINCLOSS: Objection; asked and  
21 answered.

22 THE COURT: Sustained.

23 Q. BY MR. MESEREAU: Now, let me ask you this,  
24 because you do advise businesses on how to  
25 restructure --

26 A. I do.

27 Q. -- and improve liquidity, correct?

28 A. We do, yes. 8622

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1 Q. Okay. Given the rate of appreciation of  
2 that asset, based on what you know, between 1986 and  
3 2003, can you envision a situation where Mr. Jackson  
4 says to himself, "I'll deal with the liquidity  
5 crisis each year, because it's a price worth paying  
6 to hang on to this asset the way it's increasing in  
7 value"?

8 A. I don't know what Mr. Jackson may have said  
9 to himself. But from a financial perspective, I  
10 would simply disagree with you that his interest is  
11 necessarily increasing each year given the financial  
12 structure of the arrangement.

13 Q. But the asset could be appreciating in terms  
14 of inherent value, true?

15 A. Depends on what royalties, in fact, it's  
16 generating.

17 Q. Do you know?

18 A. Actually, yes, the royalties were  
19 increasing. But again, that's the catalog in total.  
20 That's not necessarily Mr. Jackson's interest in  
21 that catalog.

22 Q. Well, let me ask you this: Had you seen the  
23 letter of March 18th -- excuse me, March 19th that I  
24 just showed you from Mr. LeGrand - okay? - where his  
25 lawyer advises him, "You can sell your interest, and  
26 you can end up worth \$200 million after taxes" --

27 MR. AUCHINCLOSS: Objection. This was --

28 this was -- the objection was sustained previously. 8623

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1 Hearsay.

2 MR. MESEREAU: I haven't finished the  
3 question, Your Honor.

4 THE COURT: I'll sustain the objection,  
5 though. I know it is the same question.

6 MR. AUCHINCLOSS: Motion to strike.

7 Q. BY MR. MESEREAU: If you'd known that asset  
8 could be sold in March of 2003 - okay? - if you knew  
9 that Mr. Jackson could have been worth 200 million  
10 after taxes by doing it, excluding royalty income,  
11 let's assume those facts just for the sake of  
12 argument, all right?

13 A. Okay.

14 Q. If you knew that, you wouldn't consider this  
15 liquidity crisis to be as serious as you've made it,  
16 true?

17 A. Well, the liquidity crisis was ongoing.

18 There's -- in my mind, there's no doubt about it, in  
19 1999, 2000, 2001, 2002, and as of February 13th,  
20 2003. In my mind there's no question about that.

21 If, hypothetically, Mr. Jackson could have  
22 sold his interest, Sony would have agreed, and it  
23 would have created a net cash to him of \$200  
24 million, of course liquidity issues would change  
25 subsequent to February 13th, 2003.

26 Q. Okay. I'm not talking about net cash. I'm  
27 talking about when all the dust settles and all the

28 loans are paid, and Bank of America is out of the 8624

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1 equation, he ends up worth \$200 million free of all  
2 debt. If you knew he could have achieved that in  
3 March of 2003, would that change your opinion about  
4 the seriousness of this liquidity crisis?

5 A. As I was saying --

6 MR. AUCHINCLOSS: I'll object as to assumes  
7 facts. Argumentative. And requires speculation.

8 MR. MESEREAU: It's just using a  
9 hypothetical, Your Honor.

10 THE COURT: I'll allow the question as a  
11 hypothetical.

12 (To the jury) I've already given you some  
13 instruction on hypothetical questions. Do you  
14 remember that instruction? Vaguely. Okay. I'll  
15 give it to you after a while.

16 Go ahead. You may answer.

17 THE WITNESS: As I mentioned, it would not  
18 change my opinion about his liquidity of the cash  
19 crisis up through 2-13-03. However, if that was  
20 known at that point in time, and at the end of the  
21 day there would be \$200 million of net worth in your  
22 hypothetical, clearly that would change a liquidity  
23 issue at that point in time.

24 Q. BY MR. MESEREAU: And certainly if Mr.

25 Jackson had received a letter from his attorney in  
26 March of 2003 stating an assumption like that, that  
27 would likely have changed Mr. Jackson's view of his

28 financial situation, right? 8625

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1 MR. AUCHINCLOSS: Objection. Improper

2 hypothetical; argumentative.

3 THE COURT: Sustained.

4 Q. BY MR. MESEREAU: Now, typically, if you

5 were going to advise Mr. Jackson on how to handle a

6 liquidity crisis, once you identified a liquidity

7 crisis like you have today, logically wouldn't you

8 sit down with the client and say, "What

9 opportunities are available to you, sir, to raise

10 millions of dollars and help solve your short-term

11 needs?" That would be one of the questions you'd

12 ask, right?

13 A. Certainly.

14 Q. And given what you know about Mr. Jackson

15 and the success he's had in the music business and

16 his reputation he's had around the world, logically

17 wouldn't one of the first questions be, "Mr.

18 Jackson, what are the opportunities available for

19 you around the world right now to raise millions of

20 dollars and help solve the crisis?"

21 A. Would that be a question an advisor would

22 ask? Is that your --

23 Q. Wouldn't that be a logical question if you

24 were consulting -- or someone like Mr. Jackson was

25 consulting you?

26 A. Certainly. Clearly cash needed to be

27 raised, and that would be a question one would ask.

28 Q. Okay. Now, have you, in your work, advised 8626

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1 people in the entertainment industry --

2 A. No.

3 Q. -- of how to restructure their affairs?

4 A. No, I have not.

5 Q. You've never done it once?

6 A. Never once.

7 Q. Well, certainly in the course of your

8 career, you've heard from time to time about various

9 celebrities in the entertainment industry who, for

10 whatever reason, end up with a cash crisis, true?

11 A. Yes.

12 Q. One of the reasons is sometimes work is

13 sporadic depending on what work you do, correct?

14 MR. AUCHINCLOSS: Objection. Argumentative;

15 irrelevant.

16 THE COURT: Sustained.

17 Q. BY MR. MESEREAU: Do you recall generally

18 what documents you looked at when you were preparing

19 your conclusions in this case?

20 A. Yes. As I mentioned, we saw -- it was five

21 to six boxes. There was a couple of boxes of UCC

22 filing statements. There was also a couple of boxes

23 of Warner-Schappell royalty statements. And I think

24 the remaining two boxes were miscellaneous financial

25 documents, including correspondence from Mr.

26 Jackson's financial advisors. And the balance sheet

27 that I mentioned to you, as well, for 1999 and 2002.

28 Q. With respect to the expenditures that you've 8627

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1 identified as exceeding income during those years -

2 okay? --

3 A. Yes.

4 Q. -- am I correct in assuming that you saw

5 some general information about how much was being

6 spent?

7 A. Yes.

8 Q. As opposed to what the individual

9 expenditures were for; is that correct?

10 A. We saw some specifics.

11 Q. Okay.

12 A. And some summaries that the consultants

13 included.

14 Q. Okay. Okay. Did you see any year-by-year

15 breakdowns about what Mr. Jackson was supposedly

16 spending this money on?

17 A. Well, we showed you 1999, which summarized

18 it by four or five different categories. There was

19 some information in 2000. There was not -- I don't

20 recall any information in '01 or '02.

21 So we saw some details, but principally we

22 saw the summarized memos of his financial

23 consultants.

24 Q. Okay. Now, you mentioned the

25 one-billion-dollar figure you saw attributed to the

26 Sony/ATV catalog, correct?

27 A. That's correct, in the IBM memo.

28 Q. And there was a second catalog as well that 8628

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1 you became aware of, correct?

2 A. That's correct, the MIJAC catalog.

3 Q. And that was a catalog devoted to Mr.

4 Jackson's own music, right?

5 A. That is correct.

6 Q. Did you see any appraisals on what the value

7 of that catalog was?

8 A. Yes. There was one done in 1999.

9 Q. And what was the value placed on that

10 catalog based on the appraisal you looked at?

11 A. \$128 million.

12 Q. And do you recall who did that appraisal?

13 A. It was the same firm that did the Sony/ATV

14 catalog appraisal. I don't remember the name of the

15 firm. It was a Los-Angeles-based firm.

16 Q. And I believe you testified that as part of

17 your analysis, you considered what the Michael

18 Jackson catalog was generating each year in terms of

19 revenue, right?

20 A. Absolutely, yes.

21 Q. Just like you took into consideration what

22 the Sony/ATV catalog was generating in terms of

23 revenue, right?

24 A. Right.

25 Q. You didn't do any analysis of whether or

26 not, between the years 1999 and March of 2003, the

27 Michael Jackson catalog could have been sold,

28 correct? 8629

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1 A. Well, I think that the Michael Jackson  
2 catalog could have been sold at any point in time.  
3 I'm not aware of any restrictions similar to the  
4 ones on the Sony/ATV catalogs. My assumption is  
5 that could be sold at any time.

6 Q. Okay. And if it had been sold in 1999,  
7 based upon the document you looked at, the best  
8 value you could ever come up with would be 128  
9 million right?

10 A. 128 million would be the value of the  
11 catalog, less, of course, any debt, taxes, et  
12 cetera.

13 Q. Right. Now, in 1999 -- actually, excuse me.  
14 Let me just rephrase that.

15 You're not aware of any efforts to sell the  
16 Michael Jackson catalog, correct?

17 A. I've never seen any documentation like that,  
18 no.

19 Q. Okay. And I believe you testified that,  
20 from what you could see, the three main hard assets  
21 were the two catalogs and Neverland, right?

22 A. Those are the three main assets, yes.

23 Q. Okay. And clearly, you didn't consider any  
24 analysis of what entertainment opportunities were  
25 ever available for Mr. Jackson during 1999 to March  
26 of 2003, right?

27 A. No, I did consider those, in that it doesn't

28 matter if those opportunities were available. There 8630

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1 was a serious cash crisis. That's a fact. That's  
2 what the documents support. Also, whether or not  
3 that could have happened, it didn't, and therefore  
4 there was a cash crisis. That's what the documents  
5 show.

6 Q. And if you knew you could solve your cash  
7 crisis tomorrow by selling a portion of an asset and  
8 accepting an opportunity to tour around the world,  
9 that would make a difference in terms of the  
10 severity of that crisis, correct?

11 MR. AUCHINCLOSS: Objection. Requires  
12 speculation, assumes facts, and asked and answered.

13 THE COURT: Sustained. Assumes facts.

14 Q. BY MR. MESEREAU: As you sit here today, you  
15 know that he's never gone bankrupt and he's  
16 continued to live at Neverland, correct?

17 MR. AUCHINCLOSS: Objection; asked and  
18 answered.

19 THE COURT: Sustained.

20 Q. BY MR. MESEREAU: Now, let me ask you the  
21 following: Let's assume that your conclusions are  
22 correct. In February of 2003, let's assume that  
23 your conclusions about Mr. Jackson's financial  
24 crisis are true. Okay?

25 A. Okay.

26 Q. As of February of 2003, how much was he in  
27 debt?

28 A. Well, the -- the Sony B of A loan had a 8631

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1 balance of \$200 million. The MIJAC loan had a  
2 balance of \$24 million. There was apparently an  
3 additional ten and a half million dollars owing to  
4 vendors that had not been paid.

5 Q. Okay. Now --

6 A. Those are the large liabilities that I can  
7 think of as I sit here right now.

8 Q. Let's assume that's all correct, all right?

9 And let's assume he doesn't want to sell his  
10 interest in the Sony/ATV catalog. Let's assume he  
11 doesn't want to sell his own catalog, which was  
12 estimated to be worth \$128 million in 1999, okay?

13 Let's assume he decides to sit there and  
14 just keep living with this, these obligations that  
15 you've identified, all right?

16 A. Okay.

17 Q. Now, let's assume he has an opportunity to  
18 make a documentary for television that can generate  
19 about \$7 million, all right?

20 A. Okay.

21 Q. Let's assume FOX is doing what is called a  
22 rebuttal documentary, okay? That \$7 million isn't  
23 going to make much of a difference, is it?

24 A. No, it's not.

25 Q. Wouldn't be worth committing a crime over  
26 \$7 million in that situation, would it?

27 MR. AUCHINCLOSS: Objection; argumentative.

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1 Q. BY MR. MESEREAU: Now, I believe you  
2 testified that on June 30th, 2002, he was not  
3 bankrupt, right?

4 A. June 30th, 2002?

5 Q. Yes. I wrote down some notes, and if I  
6 misstated that, let me know. But did you say that?

7 A. Oh, I'm sorry. Based on the financial  
8 statements --

9 Q. Yes.

10 A. -- I think Mr. Auchincloss asked, by  
11 definition of a negative net worth, does that mean  
12 he's bankrupt, and I said no.

13 Q. Okay. And could you please explain why you  
14 felt a negative net worth did not mean you're  
15 bankrupt?

16 A. As I mentioned, that financial statement,  
17 those assets were listed in what they call a tax  
18 basis, or cash basis, which means it's the cost. So  
19 that's the cost of acquiring those assets whenever  
20 they were acquired. And liabilities are, in fact,  
21 the stated amount of the liability.

22 We all know, for example, if you buy a house  
23 for 100,000, two years later it might be worth  
24 150,000. So if that's, in fact, the case, the  
25 100,000 asset is lower on the balance sheet than it  
26 is the fair market value. And that's the reason  
27 that you cannot draw that inference from that

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28 information, because that's stated at cost, not 8633

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1 necessarily fair market value.

2 Q. You were referring, in response to the  
3 prosecutor's questions, to a document dealing  
4 with -- I gather it was a financial statement from  
5 June 30th, 2002; is that correct?

6 A. That is correct.

7 Q. Okay. Now, if you were trying to determine  
8 fair market value of Mr. Jackson's assets based on  
9 that document, what would you have to do?

10 A. You'd have to go through each one of the  
11 assets and figure out what the fair market value  
12 was.

13 Q. And how would you do that?

14 A. You'd have to perform an appraisal on the  
15 largest of the assets; namely, the catalogs, and  
16 Neverland Ranch and all of the furnishings and  
17 fixtures and artwork within Neverland Ranch. And  
18 then you'd have to go through the liabilities' side  
19 and understand what the total liabilities were,  
20 adjusted for taxes, because assuming you have to  
21 sell all those assets, there's going to be taxes  
22 related to that. So that's how you go about it.

23 Q. Did Prosecutor Auchincloss ever ask you to  
24 get an appraisal done of anything?

25 A. No.

26 Q. Did Prosecutor Auchincloss ever ask you to  
27 do a fair market value analysis of anything owned by

28 Mr. Jackson? 8634

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1 A. No. But as part of the work that we were  
2 performing, we did look at and consider the value of  
3 the MIJAC catalog and the Sony/ATV, Mr. Jackson's  
4 interest in that.

5 Q. But you didn't actually have it appraised by  
6 someone capable of appraising its value, true?

7 A. There was no appraisal done, no.

8 Q. Okay. And you would agree that to put a  
9 value on something like the Sony/ATV catalog would  
10 require fairly unique expertise, would it not?

11 A. Not necessarily, no. I mean, it's --  
12 valuations -- both these valuations are simply based  
13 on cash flows. And the cash flows of that entity  
14 are then projected out into the future, and then  
15 they're discounted back. That's a common valuation  
16 technique. I've done it dozens of times.

17 Q. But they're also based on whether or not you  
18 think the hard asset is appreciating, correct?

19 A. No, it's not appreciating, because the  
20 appraisal tells you whether or not it's  
21 appreciating. It's simply based on assumptions with  
22 respect to the cash flow stream.

23 The value of those copyrights are nothing  
24 more than the cash flow going forward. That's what  
25 someone would pay for them. And so you have to make  
26 an assumption about how they'll grow, but then they  
27 simply apply a multiplier and they discount it back

28 to today's dollars using a discount rate. 8635

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1 And so it's a rather -- I'm not going to say  
2 it's simple, but it's a rather common valuation  
3 technique that we use in our business.

4 Q. And if it's so common to do, why wasn't it  
5 done in your analysis?

6 A. Well, as I said, I did consider the MIJAC  
7 valuation as of 2003 and the Sony/ATV valuation of  
8 2003. I did consider that.

9 Q. You did no analysis regarding what the  
10 marketability of his interests were in either of  
11 those assets during that point in time, and if he  
12 were to market those assets, what his condition  
13 would have been afterwards, correct?

14 A. No, that's not true. No, I did. I  
15 considered that.

16 Q. Well, I just showed you a letter from March  
17 2003 where his lawyer actually does that, and you  
18 said you didn't do any analysis like that, right?

19 A. No, I said I didn't see the letter, and I  
20 didn't do a formal appraisal.

21 Q. Okay.

22 A. But I certainly took a look at what I  
23 believed the values to be of those assets. Not the  
24 whole catalog, because you can't value the whole  
25 catalog. It's just Mr. Jackson's interest. But I  
26 certainly considered the value of the MIJAC catalog  
27 and the Sony/ATV catalog as of February of 2003.

28 Q. But correct me if I'm wrong, you said you 8636

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1 don't know how marketable that interest was, either  
2 individually or jointly with Sony at that time,  
3 right?

4 A. No, I think what I said was Sony would have  
5 to approve any sale. How marketable it is, I don't  
6 know.

7 Q. Okay. Did you ever do any analysis as to  
8 whether or not Mr. Jackson's assets were  
9 appreciating in value between 1999 and February of  
10 2003?

11 A. I believe that the catalogs were actually --  
12 that Mr. Jackson's interest in both MIJAC and  
13 Sony/ATV were depreciating. The Neverland Ranch  
14 I've just always assumed at the value that was put  
15 in, I think in 1999, by one of his advisors.

16 Q. Sir, if Mr. Jackson's interest in the  
17 Sony/ATV catalog went from 47 million in 1986 to  
18 selling half of it for 90 million in 1995, and then  
19 was estimated -- the entire catalog was estimated at  
20 a billion in 2003, based on the document you saw,  
21 how can you say it's diminishing in value?

22 A. Because when you look at the way the money  
23 gets disbursed to the partners on the sale, and you  
24 look at how much money has been advanced to Mr.  
25 Jackson over the years, he gets six and a half  
26 million dollars guaranteed every year on that.  
27 While that's going on, Sony should be getting six

28 and a half million, and they're not. So that means 8637

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1 that they are, in fact, accruing a liability on an  
2 annual basis.

3 In addition to that, Sony is making  
4 substantial investments in additional copyrights  
5 expenses which Mr. Jackson is not contributing to,  
6 so that liability increases.

7 So I literally cash-flowed a model out and  
8 looked at when anybody could expect to get cash out  
9 of the Sony/ATV catalog, and it's like out into 2015  
10 that someone would get that value, cash flows. When  
11 you discount that back to today's dollars, it's not  
12 as much as you think.

13 Q. Does anything happen in the year 2006  
14 regarding liquidity of that catalog, to your  
15 knowledge?

16 A. Well, there's a "put" option that happens in  
17 December of 2005, which Mr. Jackson could sell for  
18 \$200 million to Sony.

19 Q. What else is available?

20 A. I don't recall. I think at some point in  
21 time it can be sold. But again, the interest is --  
22 what the cash flow values are, and when you look at  
23 the actual cash flows that will result off that  
24 interest, there's been a substantial amount of  
25 pre-drawing, if you will, of disbursements.

26 Q. But you saw documents that indicated what  
27 Sony's making on the catalog.

28 A. Well, you see a financial statement that 8638

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1 shows what the entire partnership is making.

2 Q. Okay. So what you're saying is, based upon  
3 the obligations Mr. Jackson's assumed, you think  
4 value has been lost with each year; is that correct?

5 A. I do, yes.

6 Q. Okay. But you're not taking into account  
7 the value of the music around the world and what  
8 markets might be available for that music, true?

9 A. No, I am. I'm taking into account the cash  
10 flows that the partnership's generating.

11 Q. Okay. All right. Now, you indicated -- by  
12 the way, did you look to see whether Neverland has  
13 increased in value?

14 A. I didn't, no. I think at some point in time  
15 there was a value, and I just assumed that value.

16 Q. And what year did the -- excuse me, what  
17 year was there a value that you assumed?

18 A. I thought there was a number in there. I  
19 think it was sometime in the 2000 range. About \$50  
20 million.

21 MR. MESEREAU: Okay. If I may take just one  
22 second, Your Honor.

23 THE COURT: You may.

24 MR. MESEREAU: Thank you.

25 Q. As far as his expenditures go, you don't  
26 know, generally speaking, who he's spending money  
27 on, do you?

28 A. No. There is some detail in the records, 8639

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1 yes.

2 Q. How much detail would you say?

3 A. As I mentioned, in the 1999 memo it shows  
4 the expenditures for the Neverland Ranch and  
5 security, it shows for professional and legal, it  
6 shows for personal, it shows for other, so there are  
7 details in there. There's a listing of all the  
8 employees that work at Neverland Ranch. There is  
9 detail at times.

10 Q. Do you think that detail accounts for all of  
11 the expenditures you've identified today?

12 A. Well, I think -- I think that the work done  
13 by Mr. Jackson's financial consultants would take  
14 into account all the expenditures. I don't know why  
15 they would have a reason to misstate those  
16 expenditures.

17 Q. No, I don't mean the amount. I mean the  
18 actual whatever -- whatever the money was actually  
19 spent on. Did you get detail to that effect?

20 A. As I mentioned, for 1999 we have detail.

21 Q. Okay.

22 A. And there are -- there is other detail. But  
23 Holthouse was the ones writing the checks. They  
24 would know where all the money went.

25 Q. Excuse me?

26 A. Holthouse was writing the checks. They  
27 would know where that money went.

28 Q. Did you see a detailed accounting of where 8640

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1 every dollar was spent?

2 A. No.

3 MR. MESEREAU: Okay. No further questions.

4 THE COURT: Counsel?

5

6 REDIRECT EXAMINATION

7 BY MR. AUCHINCLOSS:

8 Q. Mr. O'Bryan, you mentioned that you did an

9 analysis of Mr. Jackson's interest in the Sony/ATV

10 catalog, as well as an analysis of the value of the

11 MIJAC catalog in coming to the conclusions that

12 you've stated to the jury today; is that correct?

13 A. I did consider those values, yes.

14 Q. And you've also stated that you arrived at

15 those values based on a cash flow analysis?

16 A. That's correct. That's how you value that

17 investment.

18 Q. What do you mean by a cash flow analysis?

19 A. The cash that actually is paid to someone

20 over a period of time. That's the cash flow.

21 Q. Okay.

22 A. How that cash flows to you and what you're

23 willing to pay for that investment is how much cash

24 you will get in the cash flow that you get out of

25 it. That's a common valuation methodology.

26 Q. So those catalogs are only worth their --

27 you arrive at your value based on what kind of

28 income streams they produce? 8641

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1 A. Right.

2 Q. Okay. So tell us about your analysis of the  
3 MIJAC catalog. What were your findings or what were  
4 your conclusions about the value of the MIJAC  
5 catalog based upon your cash flow analysis in this  
6 case?

7 A. Well, the MIJAC catalog, I believe, has gone  
8 down in value from 1999. The revenues, the  
9 royalties stream has gone down by almost 30 percent  
10 from the 1997, '98, '99 time frame, into '00, '01,  
11 '02, '03. And by virtue of the fact that the cash  
12 flow stream goes down, the value goes down. That's  
13 just the way -- it's the way the model works. You  
14 simply multiply the revenue stream times the  
15 multiplier. So if, in fact, the revenue stream goes  
16 down, the value goes down, and that makes sense.  
17 So that's gone down.

18 Q. Okay.

19 A. And on the Sony/ATV, it was exactly as I  
20 described, and that is that the amount of money  
21 which Mr. Jackson and/or his entities have been  
22 taking out on an annual basis and/or not paying into  
23 the partnership on an annual basis has created a  
24 growing liability.

25 And by the time you pay back that growing  
26 liability, there is a substantial amount of time  
27 that will pass before you see cash flows out of

28 that. There's a guaranteed amount of six and a half 8642

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1 million, I think, through 2005. And that goes down  
2 to two million. And then after that, it's just the  
3 actual amounts. But when those actual amounts are  
4 paid, you have to first repay the amounts that Sony  
5 hasn't been paid, and/or the investments that  
6 they've made that in fact they have not been paid  
7 back for, including interest.

8 And I looked at that and it's a long while,  
9 once you get through this guaranteed portion, before  
10 you'll see a cash flow on that investment.

11 Q. So based on everything that you've  
12 considered, I believe you said that Sony is putting  
13 more royalties -- more copyrights into that catalog  
14 as time goes on?

15 A. They continue to invest.

16 Q. Mr. Jackson is taking more than his share  
17 out in terms of cash on an annualized basis?

18 MR. MESEREAU: Objection; misstates the  
19 evidence.

20 THE WITNESS: I wouldn't say he's taking  
21 more than his share, but --

22 THE COURT: Just a moment.

23 THE WITNESS: I'm sorry.

24 MR. AUCHINCLOSS: Okay.

25 THE COURT: Well, I'll allow the answer.

26 You may --

27 THE WITNESS: I wouldn't say he's taking

28 more than his share. I would say that Sony isn't 8643

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1 getting their share.

2 Q. BY MR. AUCHINCLOSS: So is the catalog  
3 producing what was anticipated when this agreement  
4 was originally reached?

5 A. I don't know when it was anticipated, or  
6 when it was reached. I don't know.

7 Q. So tell us about this -- the structure of  
8 Mr. Jackson's interest in the ATV catalog.

9 MR. MESEREAU: Objection; foundation.

10 THE COURT: Overruled.

11 You may answer.

12 Q. BY MR. AUCHINCLOSS: You mentioned he  
13 doesn't own half of that catalog today on an asset  
14 basis. In other words, if it's worth a billion  
15 dollars, he doesn't own half a billion dollars,  
16 doesn't have a half-a-billion-dollar interest in  
17 that catalog; is that correct?

18 A. Well, he owns half of the catalog.

19 Q. Yes.

20 A. But his interest in the catalog is not worth  
21 half of the catalog value --

22 Q. All right. So --

23 A. -- because of the front-end loading of the  
24 cash flow stream that has gone to him and not gone  
25 to Sony.

26 Q. So if the catalog gets sold, then Sony walks  
27 away with more money than Mr. Jackson?

28 A. Yes, because he has to repay all of the 8644

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1 advances on all of the investments that Sony has  
2 made. Absolutely.

3 Q. And you stated that Mr. Jackson has a right  
4 to sell his interest in that catalog for \$200  
5 million; is that correct?

6 A. There is a "put" option. That means I  
7 can -- it's a technical term in financial -- it  
8 means I can put this opportunity to you, and that  
9 "put" option is worth 200 million. Starting on  
10 December 2005, Mr. Jackson can force Sony to pay him  
11 \$200 million for that investment for his share.

12 Q. And I think you previously testified that in  
13 February of 2003, that asset, his Sony/ATV catalog,  
14 was mortgaged to the tune of \$200 million; is that  
15 correct?

16 A. That's right. But remember, you also have  
17 to consider the taxes on that. If you sell that,  
18 you're going to pay taxes.

19 Q. Good point. Tell me what happens, from a  
20 tax basis, if Mr. Jackson has to sell his Sony/ATV  
21 interest for \$200 million to pay off that \$200  
22 million loan.

23 A. His basis is somewhere around \$40 million,  
24 meaning his cost basis. So you'd subtract the 200  
25 from the 40, and you get a gain of about 160  
26 million, and you'd basically calculate it in what's  
27 called capital gains rates, which federal and state

28 would be about 25 percent, so you'd pay about \$40 8645

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1 million in taxes.

2 Q. Now, you said that he can exercise this  
3 "put" option asking Sony to purchase that catalog in  
4 December of 2005, correct?

5 A. That's correct.

6 Q. When is that loan due, that \$200 million  
7 loan?

8 A. December 20th, 2005.

9 Q. Now, assuming, as Mr. Mesereau asked you to  
10 do, assuming that he was just going to sell his  
11 interest in the Sony/ATV catalog back in, let's say,  
12 2003 - okay? - February of 2003, and assuming Sony  
13 agreed and said, "We'll sell our interest. We'll  
14 sell it on the open market."

15 Using your cash flow analysis, can you give  
16 us -- get us in a range, a reasonable range on a  
17 cash flow basis what Mr. Jackson's interest would be  
18 in the sale of that Sony/ATV catalog, if it were to  
19 occur?

20 A. My -- it would be --

21 MR. MESEREAU: Objection; foundation.

22 MR. AUCHINCLOSS: He's testified he did a  
23 cash flow analysis. Counsel asked him this question  
24 as part of his opinion.

25 THE COURT: All right. I'll allow the  
26 answer.

27 As I understand the question, he's asking

28 you what interest he would have if it were sold. 8646

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1 MR. AUCHINCLOSS: That is the question.

2 THE COURT: The catalog were sold.

3 THE WITNESS: In 2003, that interest was  
4 probably worth a couple hundred million dollars.

5 Q. BY MR. AUCHINCLOSS: Okay. Now, moving on  
6 to the MIJAC catalog, you said that you did a cash  
7 flow analysis on that. What -- give us the same  
8 analysis in terms of what that catalog was worth to  
9 Mr. Jackson back in 2003.

10 A. Well, as I mentioned, the royalties had  
11 dropped about 25 percent -- 33 percent, excuse me.  
12 So if you take 33 percent off the value of 128  
13 million, then it comes up to somewhere between \$75  
14 and \$80 million.

15 Q. And he's also asked you some questions about  
16 Neverland. Do you know if Neverland has a mortgage  
17 on it?

18 A. Neverland is cross-collateralized with one  
19 of the Sony/ATV loans to the extent of \$18 million.

20 Q. What do you mean by "cross-collateralized"?

21 A. The collateral on the MIJAC loan -- excuse  
22 me, the \$24 million loan, which is now \$70 million,  
23 is collateralized by the MIJAC catalog. The bank  
24 has asked for additional collateral, including an  
25 \$18 million lien on Neverland.

26 Q. Why would a bank ask for additional  
27 collateral on a \$70 million loan?

28 A. They want more collateral. 8647

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1 Q. Would it have anything to do with the  
2 perception of what that catalog was worth?

3 A. Certainly.

4 Q. And what would the tax ramifications be if  
5 Mr. Jackson was to sell his Sony -- or sell his  
6 MIJAC catalog for, let's say, 70 million?

7 A. It would be the same calculation. The  
8 interest -- the investment was about ten million.

9 So you'd have about a \$60 million gain, I'm just  
10 rounding it to 70. Less ten million, or 60 million,  
11 at 25 percent would be about a \$10 million tax, so  
12 you'd have a net of \$50, \$60 million.

13 Q. Okay. So summarizing everything, is it your  
14 testimony that Mr. Jackson's ATV catalog is fully  
15 mortgaged? In other words, if -- well, let me back  
16 up.

17 As of February of 2003, your testimony is  
18 that the Sony/ATV catalog was worth \$200 million,  
19 approximately?

20 MR. MESEREAU: Objection. Misstates the  
21 evidence; no foundation.

22 THE WITNESS: I think that's a --

23 MR. AUCHINCLOSS: Just a minute.

24 THE WITNESS: Oh, I'm sorry.

25 MR. AUCHINCLOSS: And I should rephrase  
26 that, Your Honor.

27 THE COURT: All right. Rephrase it.

28 Q. BY MR. AUCHINCLOSS: Your testimony is that 8648

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1 that catalog, Mr. Jackson's financial interest in  
2 that catalog, the Sony/ATV catalog, in February of  
3 2003 was worth approximately -- I know we're not  
4 talking about a sharp pencil here, but approximately  
5 \$200 million?

6 MR. MESEREAU: Objection; foundation.

7 THE COURT: Overruled.

8 He's asking you if that's what you've  
9 already testified to.

10 THE WITNESS: That's correct.

11 Q. BY MR. AUCHINCLOSS: Okay. And there's a  
12 loan against it at that time for \$200 million?

13 A. That's correct.

14 Q. And if he sells that asset for \$200 million,  
15 he has to come up with another \$40 million from  
16 somewhere to pay taxes?

17 A. That's correct.

18 Q. He also has another \$10 million in unpaid  
19 vendors that he has to come up with?

20 A. As of February 13th, that's correct.

21 Q. Okay. And if he sells his MIJAC catalog for  
22 \$70 million, which is about your stated -- you  
23 stated that's about what it's worth?

24 A. Approximately.

25 Q. It is encumbered or there are loans against  
26 that catalog to the tune of about 70 million?

27 A. \$70 million, correct.

28 Q. And if he sells that catalog, then he -- he 8649

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1 incurs an additional ten million in taxes?

2 A. That's correct.

3 Q. You previously testified that Mr. Jackson  
4 was accruing debt at a rate of about, I believe it  
5 was, \$20 to \$30 million a year?

6 A. That's correct. To fund living expenses.

7 Q. So his living expenses were exceeding his  
8 income for that amount per year?

9 A. Correct.

10 Q. And as a financial advisor, is that a  
11 advisable course of action for somebody?

12 A. None that I would give.

13 Q. Okay. As far as providing you with  
14 information, is it -- is it true that I personally  
15 have not provided your office with anything in terms  
16 of me giving you documents?

17 A. Do you mean you personally?

18 Q. Yes.

19 A. I don't know where the documents came from.

20 I assume they came from your office. But you didn't  
21 hand me any document, no.

22 Q. Very well. Did Chris Linz of our office,  
23 who you've mentioned -- do you know who she has?

24 A. Yes, I've met Chris Linz.

25 Q. Was she your contact point in the District  
26 Attorney's Office?

27 A. With respect to documents. I mean we spoke

28 to you about documents. 8650

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1 Q. Yes.

2 A. We spoke to Miss Linz. And my understanding  
3 was Miss Linz was the one that passed documents to  
4 us.

5 Q. And were you given an opportunity, you or  
6 your staff given an opportunity to go through all of  
7 the D.A.'s records to review documents for purposes  
8 of your analysis and opinions in this case?

9 A. Yeah, we were made available to all the  
10 documents I believe you had.

11 Q. No restrictions whatsoever?

12 A. No. The only thing was that some just  
13 wasn't available.

14 MR. AUCHINCLOSS: Thank you. I have no  
15 further questions.

16 THE COURT: It's about time for the break,  
17 Mr. Mesereau.

18 MR. MESEREAU: Oh.

19 THE COURT: Unless you were just going to ask  
20 one question.

21 MR. MESEREAU: No, Your Honor.

22 THE COURT: All right.

23 (Recess taken.)

24 THE COURT: All right. I think it's okay  
25 now.

26 Q. BY MR. MESEREAU: Did you say you did an  
27 appraisal of the value of the Sony/ATV catalog?

28 A. No, I considered values. I did not do a 8651

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1 formal appraisal, as I mentioned earlier.

2 Q. Do you have a piece of paper which reflects  
3 your values?

4 A. I have it in my mind, yes.

5 Q. You didn't reduce it to paper?

6 A. I have papers in front of me here that show  
7 me how I get to that. But there's nothing that's  
8 formalized as far as a valuation report, no.

9 Q. So pretty much it was done in your head?

10 A. No. I mean, it was done with calculators  
11 and with computers and the like, but I understand  
12 the value, and about the amounts I stated at those  
13 times.

14 Q. Did the computer generate any type of report  
15 showing your analysis?

16 A. No. It's -- basically I have it in my notes  
17 in front of me.

18 Q. Can I take a look at it?

19 A. Certainly.

20 MR. MESEREAU: May I approach, Your Honor?

21 Q. Now, I realize you said you're not an expert  
22 in the music industry, right?

23 A. That is true.

24 Q. And you indicated you didn't know who the  
25 recording artists were whose music were copyrighted  
26 and owned by the catalogs, correct?

27 A. No, I've seen that. I just don't recall as

28 I sit here right now. The appraisal that was done 8652

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1 in 1999 lists all of the copyrighted material in  
2 that document.

3 Q. How many recording artists are we talking  
4 about; do you know?

5 A. In the Sony/ATV?

6 Q. Yes.

7 A. I don't recall. There was a number, as I  
8 recall.

9 Q. There were hundreds, correct?

10 A. Yeah. There was a substantial amount, yes.

11 Q. You had country western musicians, correct?

12 A. That's correct.

13 Q. You had very different kinds of musicians in  
14 that arrangement, correct?

15 A. There was a wide disparity of types of  
16 music, yes.

17 Q. And how many years out did you project the  
18 value of the catalog?

19 A. Well, I looked at when Mr. Jackson's  
20 interest would actually begin to see the benefit of  
21 some cash flow. And it's well out into 2015, I  
22 believe.

23 Q. Well, if you don't know who any of the  
24 recording artists are and you can't put a value on  
25 their music today or tomorrow, how can you possibly  
26 give a value to the catalog?

27 A. Because I used the financial statements that

28 were prepared by Pricewaterhouse Coopers. 8653

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1 Q. When?

2 A. They were prepared, I think, in 2003.

3 Q. Well, what is the music going to be worth in

4 2006 or 2007 when you look at it artist by artist?

5 You don't know, right?

6 MR. AUCHINCLOSS: Objection. Argumentative

7 and irrelevant.

8 THE WITNESS: Well --

9 THE COURT: Overruled.

10 You may answer.

11 THE WITNESS: No, certainly you do. I mean,

12 that's exactly how you do valuation, is you look at

13 what the catalog is producing in cash flow streams,

14 and then you value that. And that's going to change

15 over time. But you have to use historical paths to

16 then try and figure out what the future will be.

17 Q. BY MR. MESEREAU: Did they pick up any

18 artists last year?

19 A. I suspect they did. There's constant

20 investments.

21 Q. Do you know who they were?

22 A. No, I don't.

23 Q. Do you know what their music is worth?

24 A. No, I'm simply looking at the cash flow

25 stream that this partnership is producing and

26 projecting that out into the future.

27 Q. If --

28 A. That's the only way anyone can do a 8654

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1 valuation. No one is going to value the cash flow  
2 stream based on artists that aren't even in the  
3 catalog yet.

4 Q. But if you have artists who are in the  
5 catalog and you have someone who's an expert on how  
6 their music is marketed and how it might be marketed  
7 differently this year or next year, you can place  
8 additional value, correct?

9 A. Additional over what? I'm simply using the  
10 real numbers as to what the cash flow was, and that  
11 cash flow would generate a value. And that's how  
12 you value that asset.

13 Q. Has the cash flow changed from year to year?

14 A. Yes.

15 Q. Where is it going to be three years from  
16 now? Do you really know?

17 A. That's the projection you have to make --

18 Q. Okay.

19 A. -- to come up to a value. And that's  
20 exactly how it was valued -- pardon me.

21 Q. Sure.

22 A. That's exactly how it was valued by the  
23 valuation people in 1999, was simply to look at an  
24 income stream, try and understand what that income  
25 stream was going forward, and then put a multiplier  
26 on it. That's how any valuation works.

27 Q. So in other words, if you're going to try

28 and put a value on this music catalog and project 8655

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1 out three or four or five years from now, you don't  
2 need to know who the recording artists are, what  
3 kind of music they've generated, and where that  
4 music is likely to be or not be in a few years,  
5 right?

6 A. No, that has to be considered. But again,  
7 historical paths to the cash flow is what's most  
8 important.

9 Q. So now you're conceding it is important to  
10 know who the recording artists are and what value  
11 you might be able to place on their music two,  
12 three, four, five, ten years from now, right?

13 MR. AUCHINCLOSS: Objection; argumentative.

14 THE COURT: Overruled.

15 You may answer.

16 THE WITNESS: As of 2003, we know what the  
17 cash flow was. And at that point in time, you can  
18 value based on the cash flow. In fact, if there are  
19 other artists added in 2004 and 2005, that could  
20 change the cash flow, and that should be considered,  
21 absolutely. But in 2003, when you have the figures,  
22 that cash flow is known and can be used to then  
23 value into the future.

24 Q. BY MR. MESEREAU: Okay. Looking at the  
25 document that we talked about earlier, which is a  
26 letter from International Business Management dated  
27 February 13th 2003, to Attorney David LeGrand, okay?

28 A. Yes, I remember that memo. 8656

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1 Q. That's the letter that, on page two, says  
2 the value of the Sony/ATV catalog is estimated to be  
3 approximately one billion dollars; right?

4 A. That's correct.

5 Q. Okay. According to that letter, which you  
6 certainly did consider in your work, right?

7 A. That is correct.

8 Q. It says that in November of 2005, the bank  
9 will enforce a put, right?

10 A. Correct.

11 Q. Which forces Sony to either buy out Mr.  
12 Jackson's interest at fair market value, right?

13 A. Correct.

14 Q. Sell the entire catalog to a third party,  
15 right?

16 A. Correct.

17 Q. Or give Mr. Jackson the opportunity to  
18 purchase Sony's interest in the catalog, right?

19 A. Correct.

20 Q. And do you have any way of knowing what  
21 Sony's interest in the catalog will be in November  
22 of 2005?

23 A. No.

24 Q. Why not?

25 A. Because I don't have that -- I haven't  
26 calculated what Sony's interest is.

27 Q. How would you do it, if you were going to?

28 A. The same way as you do with Mr. Jackson's 8657

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1 interest, you simply look at the cash flows that  
2 would be accruing to or earned by Sony, project that  
3 out over time, and then discount it back.

4 Q. How do you relate the one-billion-dollar  
5 amount to the value either side has in the catalog?

6 A. Well, the one billion dollars is the entire  
7 catalog.

8 Q. Right.

9 A. It's made up of two components, the Sony  
10 component and Mr. Jackson's component. And the two  
11 would equal whatever the value is.

12 Q. Okay. So if the value is one -- is  
13 estimated at one billion dollars, each side would  
14 theoretically have a \$500 million interest, true?

15 MR. AUCHINCLOSS: Objection; misstates the  
16 evidence.

17 THE COURT: Overruled.

18 You may answer.

19 THE WITNESS: If it's -- if the catalog is  
20 worth a billion dollars, that's what the catalog's  
21 worth. Then you have to go about the process of  
22 understanding what the cash flows which will accrue  
23 to each party will be, and that's how you value the  
24 total one billion dollars.

25 Q. BY MR. MESEREAU: And you have no way of  
26 knowing what third parties are out there trying to  
27 purchase it, correct?

28 A. I do not, no. 8658

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1 MR. MESEREAU: Okay. No further questions.

2 MR. AUCHINCLOSS: I have no further  
3 questions, but I do have a request at sidebar.

4 THE COURT: All right. We should mark the  
5 Power Point.

6 MR. AUCHINCLOSS: And I have a copy of that,  
7 which I'll mark.

8 THE COURT: And you may approach.

9 (Discussion held off the record at sidebar.)

10  
11 FURTHER REDIRECT EXAMINATION

12 BY MR. AUCHINCLOSS:

13 Q. All right. Mr. O'Bryan, I'm just going to  
14 finish up with one final question.

15 Based upon your cash flow analysis and  
16 everything you know about this case, what is the  
17 maximum -- in general, what is the value of what  
18 Mr. Jackson could obtain for this ATV/Sony catalog  
19 in February of 2003?

20 MR. MESEREAU: Objection. No foundation; no  
21 expertise.

22 MR. AUCHINCLOSS: I phrased it in terms of a  
23 cash flow analysis, which he's testified extensively  
24 about.

25 THE COURT: What I'm going to do is limit  
26 the question to a little different question, which  
27 would be what was the value he used in determining

28 the net worth figure that he's already testified to 8659

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1 the jury.

2 MR. AUCHINCLOSS: Maybe I'll lay a couple of  
3 foundational questions before I ask that one. Just  
4 a couple.

5 Q. Mr. O'Bryan, are you familiar with how these  
6 catalogs are appraised, in general terms?

7 A. Yes, I am.

8 Q. And when an appraiser conducts an appraisal  
9 of a music catalog, do they use a cash flow  
10 analysis?

11 A. Yes, they do.

12 Q. And are cash flow analyses something that  
13 you do in the course of your business as a forensic  
14 accountant or a CPA?

15 A. All the time.

16 Q. And is -- and did you do such an analysis in  
17 this particular case?

18 A. We did, yes.

19 Q. And based upon that, can you tell us what  
20 your analysis -- what your conclusion was based on a  
21 cash flow analysis of the value of Mr. Jackson's  
22 share of the ATV catalog in February of 2003?

23 A. As I stated, I believe that's \$200 million.

24 MR. AUCHINCLOSS: All right. Thank you.

25 THE COURT: Mr. Mesereau?

26

27 FURTHER RECROSS-EXAMINATION

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1 Q. When you say Mr. Jackson had a \$200 million  
2 interest in the catalog in February of 2003, are you  
3 suggesting that if he sold it for \$200 million, he  
4 would end up with zero because of his debt?

5 A. Yes. And/or taxes.

6 Q. And where did the other 700 million in value  
7 of the catalog go to? Sony?

8 A. Go to Sony, yes.

9 MR. AUCHINCLOSS: Objection; misstates the  
10 evidence.

11 Q. BY MR. MESEREAU: Even though they each had  
12 a 50 percent interest --

13 THE COURT: Just a moment.

14 The objection is overruled.

15 Q. BY MR. MESEREAU: Even though they each had  
16 a 50 percent interest in something estimated at one  
17 billion dollars, you think Sony's interest is really  
18 worth 700 million, correct?

19 A. Yes, at least that.

20 Q. And tell me how you arrived at that  
21 conclusion.

22 A. Again, it's just simply looking at the cash  
23 flows that would be accruing to Mr. Jackson over  
24 time, beginning in 2003, out over a period of time.  
25 And because of the fact that he has taken much more  
26 than Sony, Sony is due an equal amount. Sony is  
27 additionally due the investments that they have

28 made, plus interest. The cash flows that would 8661

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1 accrue to Mr. Jackson and/or his interest would not  
2 even occur until about 2015. At that point in time,  
3 the discount rate used would, quite frankly, have a  
4 value of around \$200 million.

5 Q. Do you know Mr. Jackson was offered 400  
6 million for half of his interest in 2003?

7 MR. AUCHINCLOSS: Objection; assumes facts  
8 not in evidence.

9 THE COURT: I guess the question is are you  
10 aware of any such offer.

11 THE WITNESS: No, I'm not.

12 Q. BY MR. MESEREAU: Are you aware of what  
13 anyone has ever offered Mr. Jackson for his interest  
14 in the catalog?

15 A. No, I'm not.

16 Q. Have you ever tried to market a music  
17 catalog in your career?

18 A. I have not, no.

19 Q. Ever tried to negotiate a sale of any  
20 interest in a music catalog?

21 A. I have not, no.

22 Q. Is this the first music catalog you've  
23 analyzed with your cash flow analysis?

24 A. No. I also did one for Mr. Bowie, David  
25 Bowie.

26 MR. MESEREAU: No further questions.

27

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1 BY MR. AUCHINCLOSS:

2 Q. If Mr. Jackson wanted to sell his share of  
3 the ATV catalog to somebody else in 2003, could he  
4 have done it?

5 A. Only with the approval of Sony.

6 Q. And as far as this put goes, did you  
7 consider that in your cash flow analysis, the fact  
8 that in December of '05 he would receive \$200  
9 million?

10 A. Certainly. I mean, that's a stated amount  
11 that he could get in '05.

12 Q. So if he sold it in 2003, he would accrue --  
13 what was your tax analysis in terms of how much  
14 capital gains tax he would have to pay?

15 A. 25 percent.

16 Q. So \$40 million?

17 A. Off --

18 Q. Off the 200 million?

19 A. That's correct.

20 Q. Okay. Finally, there was --

21 A. It was \$50 million. Well, no, that's not  
22 true because you have to take the basis out.

23 Q. So you tell me.

24 A. So it was about 40 million, as I recall.

25 Q. And Mr. Mesereau said if Mr. Jackson got  
26 \$200 million, then Sony would be entitled to \$700  
27 million. I believe we've got a math problem there.

28 A. Well, the 800. That's why I said -- 8663

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1 Q. It would be 800. All right. Thank you.

2 Nothing further.

3 No further questions, Your Honor.

4 THE COURT: All right. Thank you.

5 For the record, what's the exhibit number on  
6 the Power Point?

7 MR. AUCHINCLOSS: That would be 886, Your  
8 Honor.

9 THE COURT: All right. Thank you.

10 Call your next witness.

11 MR. ZONEN: Call Rudy Provencio to the  
12 stand, please.

13 MR. PROVENCIO: Right here?

14 THE COURT: Yes, please. When you get  
15 there, remain standing.

16 Look at the clerk over here. Raise your  
17 right hand. Right here.

18

19 RUDY R. PROVENCIO

20 Having been sworn, testified as follows:

21

22 THE WITNESS: I do.

23 THE CLERK: Please be seated. State and  
24 spell your name for the record.

25 THE WITNESS: My name is Rudy R. Provencio.

26 R-u-d-y; R.; P-r-o-v-e-n-c-i-o.

27 THE CLERK: Thank you.

28 MR. ZONEN: May I proceed? 8664

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1 THE COURT: Yes.

2

3 DIRECT EXAMINATION

4 BY MR. ZONEN:

5 Q. Mr. Provencio, what is -- good afternoon.

6 A. Hello.

7 Q. What is your current occupation?

8 A. Independent contractor.

9 Q. What kind of an independent contractor are

10 you?

11 A. For entertainment, placement of music for

12 film and television.

13 Q. What does that mean?

14 A. Basically it means that I take music that

15 already exists, and I place it in film and

16 television, depending on what they are looking for

17 or what they want. You know, like for a -- for a

18 commercial, they would like want something, maybe an

19 oldies --

20 BAILIFF CORTEZ: Excuse me.

21 THE WITNESS: Can you hear me? Can you hear

22 me okay? Sorry.

23 THE BAILIFF: If you could just scoot closer

24 to the mike.

25 THE WITNESS: Scoot closer?

26 For T.V. or film, basically what are they

27 looking for? If they're looking for an oldies, like

28 if -- for instance, if The Gap is looking for an old 8665

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1 song, I would secure rights for that -- for that  
2 song and bring it in, and secure the legal part of  
3 it, and the whole nine yards, so --

4 Q. BY MR. ZONEN: Do you work for a company or  
5 are you self-employed?

6 A. Self-employed.

7 Q. How long have you been in this business?

8 A. The entertainment business?

9 Q. Yes.

10 A. 20 years.

11 Q. Prior to that, what type of work did you do?

12 A. I worked for record companies, various  
13 record companies.

14 Q. Do you know Marc Schaffel?

15 A. Yes, I do.

16 Q. Did you know him by the name Fred Schaffel?

17 A. Yes, Fred Schaffel.

18 Q. When did you first meet Mr. Schaffel?

19 A. I met him in high school in 1983, '84.

20 Q. You both went to high school, the same  
21 school?

22 A. Yes, Toledo, Ohio.

23 Q. In Toledo, Ohio?

24 A. Uh-huh.

25 Q. At some point in time, did you actually do  
26 business with Mr. Schaffel?

27 A. Not until much later, which would have been

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1 Q. And in 2001, did he contact you or did you  
2 contact him?

3 A. He contacted me.

4 Q. Now, how did he know who you were at that  
5 point or where you were or what you did?

6 A. He came over to the record labels a couple  
7 of times to pick up CDs and such, and I kept in  
8 contact with him. When he moved out to California,  
9 I met up with him, I believe in '93. Yes, it would  
10 have been '93, because I was working at Warner  
11 Brothers Records at that time, so I met up with him  
12 and, you know, we kept a casual contact.

13 Q. Were you both living in the Los Angeles area  
14 during that time?

15 A. Yes.

16 Q. All right. Did he invite you into some form  
17 of business adventure?

18 A. Yes. With him and Michael Jackson.

19 Q. All right. What was it exactly that you  
20 were invited to go into?

21 A. We were -- well, I was invited to come and  
22 participate in a benefit single called "What More  
23 Can I Give?" and he said that it was a Michael  
24 Jackson and Marc project, and they would -- were  
25 both going to hire me to work on this project if I  
26 was willing to come on board with them.

27 Q. All right. Did you eventually talk with Mr.

28 Jackson about your involvement in that? 8667

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1 A. We had a meeting at -- well, we first had a  
2 meeting with -- the first one we had at The Beverly  
3 Hills Hotel with Lee Davidian, I think is his last  
4 name, where it was Ali, myself, Marc, and we talked  
5 about doing "What More Can I Give?" into a game that  
6 Ali was producing --

7 Q. Uh-huh.

8 A. -- or such.

9 So, you know, there was a lot of material to  
10 cover in that meeting. I remember that, because  
11 there was going to be a game featuring Michael  
12 Jackson in the game --

13 Q. All right.

14 A. -- and the music of "What More Can I Give?"  
15 was going to be in that, so we talked about that.

16 Q. Explain -- "What More Can I Give?" you  
17 mentioned was a benefit single.

18 A. Charity single.

19 Q. What does that mean?

20 A. Basically we hadn't announced what  
21 Michael -- excuse me, what Michael's charities were  
22 going to be yet, because Michael would have to do  
23 that. That's -- he is the captain of the helm, so  
24 he'd have to do that. But basically what the idea  
25 and the premise was to do a benefit single that  
26 would benefit people just in general and Michael's  
27 charities in particular. We hadn't narrowed it down

28 exactly what those charities were going to be until, 8668

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1 you know, a little bit more into the project.

2 Does that answer your question?

3 Q. Yes, but we'll have a couple more, as you

4 can imagine.

5 A. All right.

6 Q. How does a single benefit anybody in the day

7 and age where you only buy CDs with many songs on

8 them? What --

9 MR. MESEREAU: Objection. Move to strike;

10 colloquy.

11 THE COURT: Coming from you?

12 (Laughter.)

13 MR. ZONEN: My sentiments exactly.

14 THE COURT: All right. Stricken.

15 MR. ZONEN: Stricken, all right.

16 Q. How does a single benefit anybody? How do

17 you market a single?

18 A. Well, we were looking at it to be the next

19 "We are the World." You know, Michael is -- was a

20 genius behind that. That made more money than any

21 other single in history.

22 Q. Tell us what "We are the World" was.

23 A. Oh. I believe in 1983 or '84 it came out

24 and basically it made a trazillion dollars. I don't

25 know how much exactly. I won't say, you know,

26 \$100 million, because I don't know. But we were

27 estimating that even if "What More Can I Give?"

28 could make half of that, that would make like 8669

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1 \$50 million right there and would be able to go to  
2 some of Michael's charities, you know, in the  
3 process.

4 Q. Okay. How is it marketed?

5 A. It --

6 Q. A single, how do you market a single?

7 A. Well, it depends. Basically, you know, we'd  
8 have -- well, the way that I was thinking that we  
9 were going to do it, the way that we had talked  
10 about it is, we would do a press release later in  
11 regards to who was going to be the beneficiaries.

12 But Michael would have to have done that because  
13 that's going to be Michael's charities.

14 But -- but it would have gone through the  
15 regular routes, which would have been a record  
16 company for the distribution. We didn't really want  
17 Sony at the time. There was some problems with  
18 Sony. So we were going to look, per advice, Marc  
19 and Michael, to go other places and look at other  
20 distribution, like I believe we ended up talking  
21 with Zamba Entertainment, and they handled Britney  
22 Spears and Backstreet Boys and stuff, and so they  
23 were hot, so we were thinking we were going to  
24 possibly go with their distribution.

25 Q. Now, like, would this be a song that would  
26 have been performed by multiple groups?

27 A. By multiple who?

28 Q. Groups. Performers. 8670

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1 A. Multiple performers, yes.

2 Q. Performers.

3 A. We had a recording time in the studio and we  
4 brought in quite a few artists.

5 Q. Is that, in fact, what "We are the World"  
6 was?

7 A. No, that was an arrangement that was  
8 different. They came from an awards show and went  
9 right across the street, essentially, or down the  
10 street and they recorded it in one fell swoop.

11 Q. And who are "they"? You say "they" came and  
12 did that.

13 A. Oh, well, the performers that were on "We  
14 are the World," Kim Carnes, Huey Lewis and the News,  
15 Michael was there, Diana Ross, everybody went from  
16 an awards show looking good and went into this thing  
17 with recording, filming, the whole nine yards.

18 Ours was a little bit different, because  
19 what we were going to do is bring people in one at a  
20 time and record it, so it was a little bit more --  
21 it was essentially the same premise, but a little  
22 bit more lengthy.

23 Q. All right. Were you anticipating having  
24 multiple groups or performers?

25 A. Yes, we did.

26 Q. And were you going to be generating an  
27 entire CD or a single song?

28 A. We were going to have a Spanish version that 8671

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1 was completed with Casey Porter doing the Spanish  
2 version, which was completed, and then we were going  
3 to have the English version and many, many, many  
4 different artists. Santana played on the Spanish  
5 version. And so we were going to have many artists  
6 on -- essentially the same amount of artists, but a  
7 little bit different with the Spanish version than  
8 the other one.

9 Q. Again, this is a single song?

10 A. Yes, a single song with many versions. So  
11 that would be considered what's called a CD-5. So  
12 that would be different versions of the same song.

13 Q. By "different versions," how would it be  
14 marketed? I mean, in a physical form.

15 A. Well, the marketing, it's its own unit when  
16 you look at it, because it's a Michael Jackson song.  
17 It's -- you know, which you can't get bigger than  
18 that. And, you know, you've got a benefit. You  
19 would have a press -- world press release around it.

20 You know, it would create its own buzz. You  
21 wouldn't even have to take out an ad anywhere, so  
22 then you'd have to have the disks from the record  
23 label to kind of get it in the public's hands, which  
24 would have been Best Buy and the other chains.

25 Q. So you actually purchase it as a CD?

26 A. You would purchase it as a CD.

27 Q. On the CD is one single song?

28 A. A single song with many versions, yes. 8672

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1 English and Spanish as well. And re-mixes. There  
2 were going to be re-mixes by Junior Vasquez.

3 Q. That does sell?

4 A. Oh, absolutely. For something like -- if  
5 you can tie into something that is of importance,  
6 like charities and things like that, then you -- you  
7 have a commodity that's very well sought after.

8 Q. Tell me when it was that you were called  
9 into this. When were you invited to explore the  
10 possibilities of joining this enterprise?

11 A. 2001.

12 Q. Do you remember when in 2001?

13 A. June is the first meeting.

14 Q. Okay. The first meeting between you and  
15 who?

16 A. Marc and Michael. And Ali joined us on that  
17 first meeting.

18 Q. All right. And that first meeting was in a  
19 hotel in Los Angeles; is that right?

20 A. Yes.

21 Q. Now, was the song already drafted? Was it  
22 already performed? Was it already recorded?

23 A. Yes, Michael had done a demo of it.

24 Q. Okay. Were artists lined up to participate  
25 in the recordings?

26 A. Yes. Absolutely.

27 Q. Had some of the artists already participated

28 in the recordings? 8673

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1 A. Not until -- not at that time. Not June.

2 Q. Okay.

3 A. Michael had a demo, and the only thing that  
4 was on it was Michael's voice.

5 Q. All right. Is it possible, in fact, to be  
6 able to have multiple artists performing at  
7 different locations at different times --

8 A. Absolutely. That's what we did.

9 Q. One of the things you have to do is wait  
10 until the whole question is asked.

11 A. Oh, I'm sorry.

12 Q. She goes nuts otherwise.

13 A. Oh, I'm really sorry.

14 Q. Is it possible to be able to, in fact,  
15 perform at different places and different times and  
16 then be able to mix it all into one product?

17 A. You can perform many places at the same  
18 time, and so that's -- yes. And then you can mix it  
19 as one product later, yes, absolutely.

20 Q. So it was not necessary to be able to have  
21 everybody perform at the same time, same location as  
22 was done in "We are the World"?

23 A. Correct.

24 Q. That was a matter of convenience back then?

25 A. That was a matter of happenstance.

26 Q. Okay.

27 A. I believe. You just happened to go across

28 the street and there you are -- 8674

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1 Q. Okay.

2 A. -- performing a song. I mean, they planned  
3 it. But they also planned it that all these  
4 performers could -- from what I understand.

5 Q. You described this as a benefit single,  
6 which means part of the purpose is to raise money  
7 for charities; is that correct?

8 A. Absolutely.

9 Q. Was it also intended to be for profit?

10 A. Well, yeah. You have to make a profit to  
11 keep going. I mean, it's like, you know, you can't  
12 be in the ditch for \$20 million. Yeah, so it had to  
13 make a profit somewhere.

14 Q. So not just pay expenses. This wasn't just  
15 a charitable enterprise exclusively, but it was  
16 going to generate profit for some people. Would  
17 that be correct?

18 A. Yes.

19 Q. Okay. Now, were you hired on salary?

20 A. Yes. Salary, uh-huh.

21 Q. Were you ultimately hired to do this?

22 A. Yes.

23 Q. And did you actually work on this project?

24 A. Yes.

25 Q. And by the time you -- from the point that  
26 you began the project to the time that you  
27 officially ended your employment on this project,

28 how long had you worked on it? 8675

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1 A. Until 2001 -- June is when we took the first  
2 meeting. I'd have to look at my records to see  
3 exactly when they signed my contract, and then it  
4 was 2003 of February, the 25th, I believe I received  
5 my last check.

6 Q. All right. And when did you cease your  
7 employment? Was it on the day you received your  
8 last check?

9 A. No, I stopped going in the office I believe  
10 it was the first week of August.

11 Q. What kind of things were you expecting to do  
12 in terms of promoting and marketing and creating  
13 this product?

14 A. Well, nobody had any record experience.

15 MR. MESEREAU: Calls for speculation.

16 MR. ZONEN: I believe he did it.

17 THE COURT: But you asked him what he was  
18 expected to do.

19 MR. ZONEN: All right. Let me change the  
20 question, then.

21 Q. What actually did you do during the two  
22 years of employment in this capacity? What types of  
23 things did you do?

24 A. Okay. Well, I was the general manager of  
25 the label of Neverland Valley Entertainment. I  
26 oversee the books. Not all of the books, but a  
27 certain major portion of the books. Everything from

28 the task of filing, to making sure artists are where 8676

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1 they're supposed to be, and doing the things that  
2 we're supposed to do to get things done to get the  
3 single finished, and to facilitate any other dream  
4 or necessity that Michael might have that would fall  
5 into us participating with him --

6 Q. All right.

7 A. -- on that.

8 Q. You've mentioned Neverland Valley  
9 Entertainment. What exactly is Neverland Valley  
10 Entertainment?

11 A. It's Marc and Michael's company.

12 MR. MESEREAU: Objection; foundation.

13 THE COURT: Sustained.

14 Q. BY MR. ZONEN: All right. At some point in  
15 time, did you become part of Neverland Valley  
16 Entertainment?

17 A. Well, yeah, when they signed my contract.

18 Q. And during the course of your two years of  
19 working as the general manager of Neverland Valley  
20 Entertainment and based on your conversations with  
21 both Marc and Mr. Jackson, did you learn what  
22 Neverland Valley Entertainment was?

23 MR. MESEREAU: Objection. Assumes facts not  
24 in evidence and foundation.

25 THE COURT: Overruled.

26 You may answer.

27 Q. BY MR. ZONEN: What is it?

28 A. Can you state the question again? I'm 8677

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1 sorry.

2 MR. ZONEN: Perhaps the court reporter could

3 read it.

4 (Record read.)

5 THE WITNESS: Well, it was a Michael and

6 Marc company. That's what it was.

7 Q. BY MR. ZONEN: Was it created while you were

8 there?

9 A. Well, yeah. It was created as -- as -- it

10 wasn't -- it wasn't flying until we got a loan, but,

11 yeah, we were in the midst of having conversations

12 with Parviz to get a loan, or they were, to get a

13 loan to get this thing flying.

14 Q. All right. Who were the people who were

15 involved at that time, at the time that you came

16 into it, with Neverland Valley Entertainment?

17 A. Who were the people involved?

18 Q. Yes.

19 A. It would have been Michael, Marc, myself.

20 You know, Dieter and Ronald were on the fringes, but

21 the -- but the single was Marc and Michael.

22 Q. The what was Marc --

23 A. The single. The "What More Can I Give?" was

24 Michael and Marc's creation.

25 Q. Did you have meetings with Mr. Jackson

26 pursuant to your coming on board?

27 A. Yeah, we had meetings at The Beverly Hills

28 Hotel, and then we had meetings at The Universal 8678

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1 Hilton.

2 Q. What discussions did you have with Mr.

3 Jackson about your involvement in this in both --

4 either of those two meetings?

5 MR. MESEREAU: Objection; vague.

6 THE COURT: Overruled.

7 You may answer.

8 THE WITNESS: Okay. The first -- the first

9 meeting, we talked about the video game, and then we

10 talked about how "What More Can I Give?" would be a

11 great project, which -- you know, which we could

12 work on, make some cash, and -- you know, and

13 basically have it segue way into many other things.

14 You know, maybe -- because there wasn't -- we had a

15 conversation in regards that the "What More" -- or

16 the "We are the World" wasn't marketed to its full

17 potential. There weren't like a lot of T-shirts

18 made. There was different marketing --

19 MR. MESEREAU: Objection; nonresponsive.

20 THE COURT: Sustained.

21 MR. ZONEN: I'm sorry, Your Honor?

22 THE COURT: Sustained.

23 Q. BY MR. ZONEN: Did you have a discussion as

24 to how "What More Can I Give?" would be marketed

25 during either of those two meetings?

26 A. Yes.

27 Q. What was the nature of that discussion?

28 A. The nature was that basically we needed to 8679

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1 reach its full potential, much more and much better,  
2 making it much bigger and making much more money  
3 than "We are the World" made. How are we going to  
4 do that? Are we going to take a present situation  
5 and make it better? You know. Basically this  
6 present model that we had was "We are the World."  
7 How do we explore that?

8 Q. And you said --

9 A. And you need a business plan.

10 Q. And you said "and make more money." Was  
11 there a discussion with Mr. --

12 A. It had to be bigger.

13 Q. Hold on.

14 A. Sorry.

15 Q. You've got to wait until the question's  
16 asked.

17 Was there a discussion with Mr. Jackson as  
18 to the potential of what could be made on the  
19 production of "What More Can I Give?"

20 A. To answer your question, Michael wanted it  
21 bigger and better than "We are the World." So it  
22 had to be more than "We are the World," which  
23 unfortunately I don't remember off the top of my  
24 head. I know it was like \$100 million, something  
25 crazy like that.

26 Q. Mr. Jackson had indicated he wanted this to  
27 exceed that?

28 A. Oh, yeah. He was very excited. It had to. 8680

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1 It had to.

2 Q. Was there any discussion as to what  
3 percentage of this would actually go toward the  
4 charitable causes and what would be profit?

5 A. We hadn't really finessed that all out.

6 I mean, we really were -- we were -- everything was  
7 moving very quickly, like everything in my  
8 experience with Michael. Everything moves very,  
9 very quickly, and Michael wants his results now.

10 And we really hadn't gotten down to sitting with  
11 lawyers to work out percentages and things like  
12 that.

13 We knew essentially, you know, what we  
14 wanted to do overall, but we had to get a product  
15 made first, so that was -- that was our first and  
16 most important thing was to get this product made.

17 Q. Did you ever actually sit down with lawyers  
18 and work out details of percentages as to who would  
19 get what during the course of that two years you  
20 worked on that project?

21 A. No.

22 Q. Did you have some form of contract signed  
23 with either Michael Jackson or Marc Schaffel as to  
24 what your compensation would be?

25 A. Yes. They gave me a point on the record.

26 Q. Did you have a salary in addition to a point  
27 on the record?

28 A. Yes, I did. 8681

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1 Q. What was the salary?

2 A. 225,000.

3 Q. And was that for the duration of the  
4 project?

5 A. For the project.

6 Q. Would it make a difference how long the  
7 project took?

8 A. Not really. The project had to be done,  
9 so --

10 Q. Did you have a sense at the time as to  
11 what -- I mean, did you anticipate what it would be?

12 A. A year, maybe a little bit more. But a  
13 year.

14 Q. Now, you also said a point was given to you.

15 What does that mean?

16 A. Well, a point is basically a percentage, or  
17 a 1 percent of the gross, or the total of a project.

18 Marc got four points. Michael had given Marc four  
19 points. And Michael and Marc had given me one  
20 point.

21 MR. MESEREAU: Objection; nonresponsive.

22 THE COURT: Sustained.

23 Q. BY MR. ZONEN: All right. Let's talk about  
24 what was going to you, and then we'll talk about Mr.  
25 Schaffel.

26 A. Okay.

27 Q. One point was given to you, and you

28 mentioned the gross. Explain what that means. 8682

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1 A. Well, what the album makes, you know, is  
2 considered -- you know, what it really actually --  
3 what's in the kitty at the end of the day is  
4 really -- you know, what you're selling -- I'm not  
5 making sense here, but what -- when the product is  
6 sold, you know, you've got your expenses covered  
7 first. That comes out of -- like you make a dollar,  
8 and let's say you just made the dollar from that CD.  
9 You're -- 60 cents of it is taken away because  
10 it's, you know, marketing, whatever.

11 This was going to be a cheap single, so we  
12 weren't going to be spending a tremendous,  
13 tremendous amount of money, so there would be more  
14 take-home, you know, for Neverland Valley  
15 Entertainment, so -- I think I just got lost.

16 Q. Let me ask this: The 1 percent gross --

17 A. Uh-huh.

18 Q. -- does that mean your 1 percent would come  
19 to you before any of the expenses were paid?

20 A. Oh, no. We hadn't worked that all out yet.

21 That hadn't been worked out. So if the record made  
22 50 million dollars, you know -- you know, you have  
23 to remember, we hadn't sat down with the lawyers to  
24 get the exact verbiage down, so we were estimating.  
25 And our assumptions in our meetings was that if it  
26 made \$50 million, I would be getting 1 percent of  
27 that.

28 Q. Which would be \$500,000? 8683

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1 A. Or if it made more.

2 Q. Or if made 100 million, you'd get one  
3 million?

4 A. Exactly.

5 Q. All right. Did you negotiate that? In  
6 other words, was that part of the negotiation as you  
7 came into this project?

8 A. No.

9 MR. MESEREAU: Objection; relevance.

10 THE WITNESS: No.

11 THE COURT: Sustained.

12 Q. BY MR. ZONEN: When did you get the 1  
13 percent?

14 MR. MESEREAU: Objection; relevance.

15 THE COURT: Sustained.

16 Q. BY MR. ZONEN: Who was it who gave you the 1  
17 percent?

18 A. Michael and Marc.

19 MR. MESEREAU: Objection; relevance.

20 THE COURT: Overruled.

21 Q. BY MR. ZONEN: Go ahead.

22 A. Michael and Marc.

23 Q. Was that in the form of a document signed by  
24 both of them?

25 MR. MESEREAU: Objection. Leading and  
26 relevance.

27 THE COURT: Overruled.

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28 You may answer. 8684

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1 THE WITNESS: Yes. They both signed it.

2 Q. BY MR. ZONEN: And did you -- and did you  
3 commence work on this project?

4 A. Yes.

5 Q. All right. What were the -- over the next,  
6 say, couple months after you began working in June  
7 of '01, did you speak with Mr. Jackson on any kind  
8 of regular basis?

9 A. Well, we had the studio time, and we'd have  
10 our meetings in the studio time, and, you know,  
11 there was plenty of filming of that.

12 Q. Did you have conversations with him as well?

13 A. Yes.

14 Q. What was Mr. Schaffel's role in this? You  
15 were the general manager. What was he?

16 A. He was the president of Neverland Valley  
17 Entertainment.

18 Q. And did he have a similar agreement to yours  
19 in terms of compensation?

20 A. Yes, he did.

21 MR. MESEREAU: Objection; no foundation.

22 THE COURT: Sustained.

23 Q. BY MR. ZONEN: As the general manager, did  
24 you have access to all of the records that dealt  
25 with the expenditures?

26 A. Well, they were in a filing cabinet, and I  
27 went through all of them, yes.

28 Q. You read them all? 8685

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1 A. I read most of them.

2 Q. As well -- it was the two of you. Did you  
3 have conversations with Mr. Schaffel about such  
4 matters?

5 A. Oh, yeah, we talked about things. He was a  
6 little bit more braggadocious, but --

7 MR. MESEREAU: Objection; nonresponsive.

8 THE COURT: Sustained.

9 Q. BY MR. ZONEN: Braggadocious?

10 A. Yeah. He bragged a lot.

11 Q. What was his compensation, Mr. Schaffel's?

12 MR. MESEREAU: Objection. Foundation;  
13 relevance.

14 THE COURT: Sustained.

15 Q. BY MR. ZONEN: Did you review his employment  
16 documents as well?

17 A. I looked at them, yes.

18 Q. Yeah. And did that contain what his  
19 compensation was?

20 A. Yes.

21 Q. And what was it?

22 MR. MESEREAU: Objection; relevance.

23 THE COURT: Sustained. It's hearsay, really.

24 Q. BY MR. ZONEN: During the next couple  
25 months, you indicated that you did have meetings  
26 with Mr. Jackson. Can you tell us with what level  
27 of frequency you would meet with him?

28 A. Well, whenever he came to the studio, but 8686

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1 sometimes he wouldn't come to the studio. So it was  
2 whenever he came into the studio.

3 Q. And how often might that be?

4 A. Boy, the first couple of months, it was  
5 pretty regular. I mean, he came in, you know, three  
6 or four times a month.

7 Q. Did you have meetings with him on a regular  
8 basis when he came into the studio?

9 A. Well, we would talk about the project, how  
10 did we think -- when Michael walks in the door,  
11 he's -- he's meticulous. He wants to know  
12 everything that's going on and what's happening, and  
13 he's a great businessmen.

14 MR. MESEREAU: Objection. Nonresponsive and  
15 move to strike.

16 THE COURT: Sustained.

17 Q. BY MR. ZONEN: Did you brief Mr. Jackson on  
18 a regular basis of what was going on with Neverland  
19 Valley Entertainment?

20 A. We did, yes.

21 MR. MESEREAU: Objection. Foundation;  
22 leading.

23 THE COURT: Overruled.

24 You can go ahead and answer.

25 He did. He said, "Yes."

26 Q. BY MR. ZONEN: How did you do that? How did  
27 you brief him?

28 A. We would have meetings. Michael would want 8687

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1 to know what's going on. "Who do we have coming in?

2 Did you get this person? Is Usher coming?"

3 MR. MESEREAU: Objection. Nonresponsive;

4 move to strike.

5 THE COURT: I'll strike after, "We would have

6 meetings."

7 Q. BY MR. ZONEN: What kind of things would Mr.

8 Jackson want to know in the course of these

9 meetings?

10 A. That we are getting the hottest artists out

11 there right now on this project. We had to be the

12 hottest.

13 Q. And did he ask you details in terms of who

14 you were going after and what you were intending to

15 do, attempting to do?

16 MR. MESEREAU: Objection; leading.

17 THE COURT: Overruled.

18 Q. BY MR. ZONEN: You can answer.

19 A. Oh, he wanted to know that it was the

20 hottest artist, and when are they coming, and what

21 are we doing.

22 Q. All right. In addition to the meetings at

23 the studios that took place, did you also have

24 meetings with him at other locations?

25 A. The -- well, like I said, we had The Beverly

26 Hills Hotel. We had the studio meetings. And then

27 we would have -- we had two meetings at The

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1 Q. All right. Did you have telephone

2 conversations with Mr. Jackson?

3 A. Oh, yeah. He called -- him and Marc would

4 call my house.

5 Q. On what level or frequency? And we're

6 talking about Mr. Jackson, not Marc Schaffel. But

7 on what level of frequently would you have a

8 conversation with Mr. Jackson about the business?

9 A. In the beginning, the first couple of

10 months, it was -- I would say it was -- it was

11 semi-regular, once or twice a month. You know, just

12 late-night phone calls, because Michael gets up

13 late, so -- or -- so it would be late-night phone

14 calls sometimes.

15 Q. You would be home by the evening hours?

16 A. Yeah, I'd be home.

17 Q. All right.

18 A. Exhausted, but home.

19 Q. And did you ever get calls from Mr. Jackson

20 while you were at the office?

21 A. Yes, he would call in.

22 Q. And did you, in fact, have an office there?

23 A. Yes, at Neverland Valley Entertainment.

24 Q. And where was Neverland Valley

25 Entertainment?

26 A. In Calabasas, California.

27 Q. At somebody's residence?

28 A. At Marc's residence, yes. 8689

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1 Q. Describe for us his residence, please, in  
2 Calabasas.

3 A. A gated community. Pretty swanky. It's  
4 pretty nice. A rich person's home.

5 Q. And was the office set at a particular  
6 location within the house?

7 A. Upstairs.

8 Q. All right. Were there multiple offices  
9 devoted to this project?

10 A. Well, you know, there was an office at  
11 Neverland, but, you know, that wasn't really used  
12 that much. You know, it was you usually worked out  
13 of the bungalow and then -- and then -- but that was  
14 the primary office, Mr. Schaffel's --

15 Q. At Mr. Schaffel's residence, were there  
16 multiple rooms that were devoted to this project?

17 A. Yes.

18 Q. Okay. Did you have separate rooms from Mr.  
19 Schaffel?

20 A. Yes. I did.

21 Q. Okay. Were you able to hear, from where you  
22 worked, conversations that Mr. Schaffel was having  
23 on the telephone?

24 A. Well, Marc had a really bad habit of having  
25 you sit there, and he would --

26 MR. MESEREAU: Objection; nonresponsive.

27 THE COURT: Overruled.

28 You may finish that sentence. 8690

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1 THE WITNESS: Marc would have a really bad  
2 habit of having you sit there, and he would put  
3 people on speakerphone, and -- or answer on  
4 speakerphone, so you would know who it was, so he  
5 can kind of gloat that, you know, "Oooh, look who  
6 I'm talking to," whether it's Michael or Beyonce or  
7 some other star. And then he would pick up the  
8 phone or he would just leave them on speakerphone,  
9 and you could hear the whole conversation.

10 Everybody in the house that we were working  
11 in, we were always shocked that pretty much a lot of  
12 business was known just by sitting there, you know.

13 Q. BY MR. ZONEN: All right. So did you have  
14 to actually be in his room to be able to overhear  
15 these conversations?

16 A. Well, yeah. I mean, pretty much you had to  
17 be in his office. But then I could hear them in my  
18 office, too, if I jumped on a conference call with  
19 them.

20 Q. Did you frequently overhear conversations  
21 that Marc Schaffel was having with other people  
22 concerning his business enterprise?

23 A. Yes.

24 Q. Did you frequently overhear conversations  
25 that Marc Schaffel was having with Michael Jackson?

26 A. Yes.

27 MR. MESEREAU: Objection; foundation.

28 THE COURT: Sustained. 8691

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1 Q. BY MR. ZONEN: Do you know Michael Jackson's  
2 voice?

3 A. Yes.

4 Q. Is it fairly distinct?

5 A. Well, unless he's upset. Then he uses the  
6 other voice.

7 Q. Now, you tell us another voice --

8 MR. MESEREAU: Objection; nonresponsive.

9 THE WITNESS: Oh.

10 THE COURT: Sustained.

11 Q. BY MR. ZONEN: Have you talked with Mr.

12 Jackson often enough or been present during his  
13 conversations that you're able to recognize his  
14 voice when he calls?

15 A. Michael Jackson's voice is the most  
16 distinctive voice in the world, I think.

17 MR. MESEREAU: Objection. Nonresponsive;  
18 move to strike.

19 THE COURT: Overruled. Next question.

20 Q. BY MR. ZONEN: All right. That means yes,  
21 you do know his voice?

22 A. Yes.

23 Q. And you know his voice well?

24 A. Based on my experience of hearing him.

25 Q. On those occasions when he called, did you  
26 have any difficulty at all recognizing his voice?

27 A. No. God, no. He always introduced himself

28 as Michael Jackson. 8692

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1 Q. All right. Were you able to overhear  
2 conversations between Marc Schaffel and Michael  
3 Jackson?

4 A. Yes.

5 Q. Both sides of the conversation? In other  
6 words --

7 A. At times. Not all the time, but at times.

8 Q. All right. Can you give us a sense of how  
9 often you would overhear a conversation? And I'm  
10 now talking about both sides of the conversation  
11 between Marc Schaffel and Michael Jackson. How  
12 often would that happen?

13 A. Could you be more clear? I'm sorry.

14 Q. Well, in the first couple months of your  
15 employment with Neverland Valley Entertainment --

16 A. Uh-huh.

17 Q. -- give us a sense of how often you would  
18 overhear a conversation between Marc Schaffel and  
19 Michael Jackson.

20 A. Frequently. Especially if I stayed later,  
21 because Michael would always -- always call later.  
22 And he would always call him "Arnold." That was his  
23 nickname. "Ar-nold." And then -- and then he would  
24 pick up the phone and say, "You're looking for  
25 french fries?"

26 MR. MESEREAU: Objection. Nonresponsive;  
27 move to strike.

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1 Q. BY MR. ZONEN: All right. We'll get to

2 Arnold in just a moment.

3 A. Oh, all right.

4 Q. Let's talk about -- if we can, let's talk

5 about -- this happens when we get later in the day.

6 A. Okay.

7 Q. The frequency with which you might hear

8 conversations between Michael Jackson and Marc

9 Schaffel where you could actually hear both sides of

10 the conversations, you answered "frequently" to that?

11 A. Yeah.

12 Q. Give us a sense, please, of what that means

13 in a week period of time.

14 A. Well, if you're speaking about the

15 beginning, before the Martin Bashir thing, Michael

16 was calling. He wanted to know what was happening

17 with the project. He's a meticulous businessman.

18 MR. MESEREAU: Objection. Nonresponsive;

19 move to strike.

20 THE COURT: So the question is kind of hard

21 to get back to, but you were asking him what the

22 frequency of calls from Michael Jackson were.

23 MR. ZONEN: Yes, Your Honor, I was.

24 THE COURT: That's the question. How often

25 did he call in a week?

26 THE WITNESS: In a week? God, sometimes ten

27 times. Hey, he would be on the phone with him for

28 hours sometimes at night. And we didn't have a 8694

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1 schedule. You have to remember, work is work. You  
2 get up, you work. And when Michael calls and you  
3 got something to do, you work.

4 MR. MESEREAU: Objection; nonresponsive.

5 THE WITNESS: So it's like that's the way it  
6 was.

7 Q. BY MR. ZONEN: Give us a sense of when you  
8 were there at this office in Calabasas, what kinds  
9 of hours and days did you put in?

10 A. Seven days a week. If you had to do  
11 something, you had to do it.

12 Q. Now, you were working pretty much full time  
13 on this project?

14 A. Yes. This was our only project in the  
15 beginning.

16 Q. The point that was offered to you, that  
17 1 percentage of -- at the time as was described as  
18 gross, did that give you some incentive to work even  
19 harder on making this --

20 A. Well, God, yeah.

21 MR. MESEREAU: Objection. Leading and  
22 relevance.

23 THE COURT: Sustained.

24 Q. BY MR. ZONEN: What is the consequence of  
25 having a commission like that?

26 A. You'd be rich.

27 MR. MESEREAU: Objection; relevance.

28 MR. ZONEN: Would you like me to move on, 8695

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1 Judge?

2 THE COURT: Yes.

3 MR. ZONEN: And I will.

4 Q. All right. During the course of the  
5 conversations that you had with Mr. Jackson, and of  
6 course the conversations you had overheard with Mr.  
7 Schaffel, as frequently as they were, describe how  
8 attentive to business Mr. Jackson was.

9 A. He wanted to know the details.

10 MR. MESEREAU: Objection; no foundation.

11 THE COURT: Overruled.

12 Q. BY MR. ZONEN: Go ahead.

13 A. He wanted to know the details. He wanted to  
14 know what was happening with the project. You know,  
15 the project was -- you know, it was taking time to  
16 get the artists in, so he wanted to know we were  
17 getting the hottest artists and the best artists,  
18 and where were we going to be going next, and -- and  
19 things like that. I mean, it was pretty much our  
20 duty to make sure everything was set up.

21 MR. MESEREAU: Objection; nonresponsive.

22 THE COURT: The last sentence is stricken.

23 Q. BY MR. ZONEN: Do you know who was financing  
24 this project?

25 A. Michael was.

26 Q. Do you know how it was being financed?

27 A. Yes.

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1 A. Through a money lender named Parviz in  
2 Beverly Hills.

3 Q. Was that a loan that was obtained by Michael  
4 Jackson?

5 MR. MESEREAU: Objection; leading.

6 THE COURT: Overruled.

7 Q. BY MR. ZONEN: Go ahead.

8 A. Yes, it was a loan that Marc and Michael got  
9 from Parviz for ten million dollars.

10 Q. Were you there?

11 A. I was there when the paperwork was signed.

12 We brought the paperwork to Parviz after Michael had  
13 signed it in Beverly Hills, in the 9000 -- I believe  
14 the 9000 block of Beverly Hills, Wilshire, and  
15 Parviz ran it upstairs, and we came back the next  
16 day, and it was signed.

17 Q. Okay. Now --

18 A. And I saw the document.

19 Q. Was the ten million dollars actually turned  
20 over to either Marc Schaffel or Michael Jackson?

21 A. No, it was -- it was, like, in the bank, and  
22 they withdrew, I think it was like two million  
23 dollars, two and a quarter initially to start the  
24 company, start the project going.

25 Q. All right. And which bank, incidentally,  
26 was that deposited into?

27 A. It was -- it was Marc's bank, and that would

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28 have been B of A. No, not B of A. It was, uh, U -- 8697

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1 God, I can't remember the name of it. I can see the

2 logo, but I can't remember the name of it. But --

3 Q. Were you about to say --

4 A. But it was the one off of Santa Monica. I

5 remember because we went there many times, because

6 Beverly was the lead person that we dealt with.

7 Q. All right. So you were there in Santa

8 Monica, the City of Santa Monica?

9 A. Uh-huh.

10 Q. Beverly was the person --

11 A. Yes.

12 Q. -- you dealt with?

13 A. Her name was Beverly.

14 Q. And you've seen her?

15 A. Oh, yeah, I've talked to her many times.

16 She made me open an account. I didn't have a

17 million dollars to put in it, but --

18 Q. Did you get a toaster?

19 A. I didn't get anything. So -- but I opened

20 an account with her.

21 THE COURT: You want to quit, don't you?

22 MR. ZONEN: I really do.

23 THE COURT: All right.

24 See you tomorrow at 8:30. Remember the

25 admonitions.

26 MR. ZONEN: Thank you.

27 (The proceedings adjourned at 2:30 p.m.)

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1 REPORTER'S CERTIFICATE

2

3

4 THE PEOPLE OF THE STATE OF )

5 CALIFORNIA, )

6 Plaintiff, )

7 -vs- ) No. 1133603

8 MICHAEL JOE JACKSON, )

9 Defendant. )

10

11

12 I, MICHELE MATTSON McNEIL, RPR, CRR, CSR

13 #3304, Official Court Reporter, do hereby certify:

14 That the foregoing pages 8533 through 8698

15 contain a true and correct transcript of the

16 proceedings had in the within and above-entitled

17 matter as by me taken down in shorthand writing at

18 said proceedings on May 3, 2005, and thereafter

19 reduced to typewriting by computer-aided

20 transcription under my direction.

21 DATED: Santa Maria, California,

22 May 3, 2005.

23

24

25

26

27 MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

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